Comment Letter O5

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May 5, 2009

United States Fish and Wildlife Service
California/Nevada Operations Office
Attn: Mary Grim
2800 Cottage Way, Room W 2606
Sacramento, CA 95825

United States Fish and Wildlife Service
Ventura Office
Attn: Steve Kirkland
2493 Portola Road, Suite B
Ventura, CA 93003

Submitted via email to fw8tumshcp@fws.gov and hard copy via U.S.P.S.

RE: Tehachapi Uplands Multi Species Habitat Conservation Plan and Environmental Impact Statement

Dear Ms. Grim and Mr. Kirkland:

Defenders of Wildlife (Defenders) is pleased to submit these comments on the Draft Environmental Impact Statement (DEIS) on the Draft Tehachapi Uplands Multi Species Habitat Conservation Plan (MSHCP). We incorporate by reference the comments we submitted during the Notice of Intent (NOI) proposing preparation of an Environmental Impact Statement for the issuance of an incidental take permit associated with a habitat conservation plan (HCP) for the endangered California condor developed by Tejon Ranch Corporation (69 Federal Register 35663; June 25, 2004) and the scoping comments we submitted for consideration in the preparation of an Environmental Impact Statement on the Tehachapi Uplands Multi Species Habitat Conservation Plan (MSHCP) on April 24, 2008.

Defenders of Wildlife is a non profit, conservation organization with over one million members and supporters nationwide, more than 200,000 of which reside in California. Defenders is dedicated to protecting all wild animals and plants in their natural communities. To this end, Defenders employs science, public education, media, legislative advocacy, litigation, and proactive on the ground solutions in order to impede the accelerating rate of extinction of species, loss of biological diversity, and habitat alteration and destruction. **O5-1**

Defenders has reviewed the proposed MSHCP and associated DEIS and submits the following timely comments to express our views and to detail our concerns related to the minimization, avoidance and mitigation measures as proposed in the MSHCP and DEIS related to the future development on Tejon Ranch (Ranch).

Take of several "Covered Species" is not allowable by law

The MSHCP as written is designed to allow non-lethal take of golden and southern bald eagles. However, both species are protected under the Bald and Golden Eagle Protection Act (Eagle Act). The Eagle Act is a ***strict liability statute with no provision for take***. Defenders believes the take provision proposed herein is currently illegal, and new rules governing take provisions within the Eagle Act must be promulgated by the U.S. Fish and Wildlife Service before implementation of any take provisions in this MSHCP.

The definition for "take" under the Eagle Act means to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. The "avoidance and minimization measures proposed in…this Plan are designed to avoid lethal take" of both bald and golden eagles. MSHCP at 6-16 and 6-21. However, the MSHCP goes on to state that breeding golden eagles appear to be quite sensitive to human presence. The MSHCP also includes a lengthy list of potential impacts to bald and golden eagles including impairment of water quality; lighting effects; cattle-related impacts such as overgrazing, congregating in, trampling of and otherwise degrading primary breeding, foraging and wetland habitats; Ranch operations related to maintenance of roads; utility maintenance; film production; and human presence and associated passive and active recreation. These activities are likely to disturb bald and golden eagles and constitute take under the Eagle Act. Avoidance of lethal take is not sufficiently adequate and all take of bald or golden eagles, including activities that would disturb natural behavior by these species, must be avoided and must not occur. O5-2A

Furthermore, six of the "Covered Species" (California condor, American peregrine falcon, golden eagle, ringtail, southern bald eagle, and white-tailed kite) are "Fully Protected" under California state law. The classification of Fully Protected was California's initial effort in the 1960's to identify and provide additional protection to animals that were rare or faced possible extinction. ***Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take*** except for collection for scientific research or relocation of bird species for the protection of livestock. Since the proposed development does not fall under either of the exempted activities, take for all Fully Protected species must be avoided and must not occur. O5-2B

As proposed, Tejon Mountain Village is not consistent with California condor recovery

Portions of Tejon Ranch have been and will continue to be important to the survival and recovery of the highly endangered California condor, as evidenced by its designation as critical habitat for the species. Even minor developments may have major impacts to the condor. Condors are inquisitive animals, drawn to activity areas such as dispersed housing and recreation sites. When a condor has been behaviorally compromised through interactions with people or manmade structures, the condor may teach inappropriate behaviors to other condors through example and further perpetuate management problems, reducing the viability of condors in the wild and undermining the long-term and multi-million dollar recovery effort undertaken for the species. Allowing development on Tejon Ranch may seriously diminish the value of the Ranch's condor critical habitat unit to the long-term conservation of the species. O5-3A

The planned Tejon Mountain Village (TMV) cuts through the heart of historic and contemporary habitat for California condors. The TMV Specific Plan Area covers more than 26,000 acres and "would include up to 3,450 residences, 160,000 square feet of commercial development, two golf

courses, an equestrian center, 750 hotel rooms, and up to 350,000 square feet of support uses." DEIS at 2-11. Development of this magnitude will negatively impact natural condor behavior and will constitute take under the federal Endangered Species Act (ESA). O5-3 (Cont.)

While the intention of the condor biologists contracted by Tejon Ranch Corporation was to protect key condor habitat, the negotiations were unsuccessful in protecting much of area utilized by condors. When comparing the six years of GPS data of California condor locations provided in MSHCP Figure 4-2 with the TMV Planning Area Development in MSHCP Figure 4-6, it is clear that condors will be impacted by the development of TMV. Of particular concern is the northwest portion of TMV, adjacent to Grapevine Peak. This area should not be developed, as it is a critical corridor for flights into and out of the important condor foraging areas of the Ranch. At minimum, the northwest portions of TMV should be removed from the plan. Further, we recommend that development in higher elevation areas and along all ridges be avoided altogether. O5-3B

The residences of TMV have the greatest potential for conflicts, including telephone wires, harassment, etc. If allowed, construction activities must be carried out in a manner that discourages perching by condors and does not interfere with their overflights or foraging areas. Again, this is especially important for the Grapevine Peak area.

Defenders does not agree with the conclusion that the "Commercial and Residential Development covered activities will not…cause the destruction or adverse modification of condor critical habitat within Tejon Ranch." MSHCP at 4-68. Particularly concerning is the potential for a vast network of power lines, which have proven to be a considerable threat to condors. (See, Sorenson, Kelly J., et al., "Interactions Between California Condors and Powerlines in California."). Provisions are included for mitigating collisions with telephone wires, by not allowing additional wires, but it is not clear whether residences will have wires leading to the houses. All power lines within the TMV development should be under-grounded. No new cell phone towers or antennae for other purposes should be constructed. If collisions with existing lines occur, the offending wires must be under-grounded for at least 1,000 feet on either side of the collision site, instead of a provision for so-called "bird diverters" or other questionable devices. O5-4

Appendix C states that "[b]ecause of the potential for raptors, including the California condor, to collide with wind turbines, the installation of such turbines will be prohibited on all residential and commercials lots within Covered Lands." However, the preceding paragraph includes a contradictory statement declaring that "individual wind turbines, which have the primary purpose to serve electrical generation needs on site, may be constructed if, after review and approval by the FWS, such turbines are of a design and in a location that would not pose a threat to condors." Appendix C at 69. Due to the acknowledged potential for collisions with turbines by raptors including but not limited to condors, we believe that no new wind turbines should constructed within TMV. O5-5

With regards to microtrash within TMV, we urge you to include residences in the list of areas where routine efforts for elimination of microtrash must occur. All residences within TMV should also be required to have trash receptacles fitted with animal (especially bear)- and weather-proof lids. Additionally, clean-up of microtrash should occur regularly (i.e. daily) throughout the duration of filming activities and not be limited only to the completion of film shoots. O5-6

The discussion on 4-44 of habitat loss and FWS opinion that habitat loss is not important for preserving condors is dubious at best. The use of many areas of southern California by condors has O5-7

ceased over the years with encroachment of development. Nesting used to occur near Pasadena, but has not occurred since the development of northeastern Los Angeles. The potential is strong for impaired use of habitats on the Tejon Ranch if the TMV development is allowed to proceed. Due to the crucial connectivity the Ranch provides to historic condor range in the southern Sierra Nevada from the species' highly utilized habitat in the coastal ranges, this is especially concerning.

O5-7 (Cont.)

Some of the proposed mitigation measures related to the critically endangered California condor are adequate, such as the inclusion of funding for telemetry and continuing costs associated with condor monitoring. However, the $25,000 per year for operations, maintenance, and/or replacement of GPS transmitters should be assured for the life of the MSHCP (50 years) instead of just 10 years as stated. Appendix C at 74.

O5-8

While we support the hiring of a full-time staff biologist to oversee the minimization and mitigation of interactions between humans and condors and to administer the avoidance, minimization and mitigation measures of the proposed MSHCP, we believe that the scope and responsibilities of this position may prove to be a significant burden for just one biologist. Therefore, we recommend that these duties be split amongst a team of minimally two or three biologists, especially during periods of major construction and other significant activities such as filming on the Ranch.

O5-9

Defenders fully supports and appreciates of the efforts to reduce lead poisoning of condors through the Ranch's voluntary requirement of non-lead ammunition for its hunting program and participation in the supplemental feeding program to ensure clean carcasses are provided to condors on the Ranch. However, we are concerned that the feeding program may exacerbate overflights of the TMV. This program must be carefully and sufficiently monitored and feeding locations must be adjusted if disturbance to natural condor foraging activities occur. Avoidance of condor overflights of the TMV would be minimized if one of the condor feeding sites were located on Grapevine Peak, to the northwest of TMV.

O5-10

No take should be allowed for any amphibians within the project

Amphibians are declining worldwide from a variety of factors including pollution, climate change, disease, and introduction of non-native species. However, habitat loss and fragmentation are among the largest threats to amphibian populations (Cushman). A recent assessment of the status of global amphibian populations identified habitat loss as the single greatest identifiable factor contributing to amphibian declines (Stuart et al., 2004). Considering the current crisis amphibians are facing worldwide, Defenders believes that take for all amphibians related to development on Tejon Ranch should be avoided and must not occur.

O5-11A

Moreover, the FWS recently found the Tehachapi slender salamander to be warranted for protection under the ESA (FR Doc. E9-9220, Filed 4-21-09). The best available scientific information shows that the species has declined due to habitat loss and degradation and faces ongoing threats to its continued existence. The Tehachapi slender salamander is extremely narrowly distributed and is known to occur only in two small areas in south-central Kern County, California. The species has already become extirpated from the Tehachapi Pass area, likely as a result of highway construction, and the remaining populations in the Tehachapi Mountains are primarily on private lands, including the Tejon Ranch, which is succumbing to human development. Indeed, rapid human population growth within the region is reported to be a significant threat to the species. Hansen and Wake (2005) state:

O5-11B

> Plans exist for the development of several new communities on the vast Tejon Ranch property. Owing to the small size and localized nature of Tehachapi slender salamander population, the Tejon Ranch sites appear especially vulnerable to habitat disturbance. (p. 693)

Petition to List at 2 3.

Construction activities when coupled with other Ranch activities such as cattle grazing, film production, culvert, drainage and utility maintenance, and human presence constitute potentially significant cumulative impacts that could result in habitat degradation and possible mortality of the Tehachapi slender salamander. All modeled suitable habitat, which has the potential of supporting up to 216 individual salamanders, must be avoided and take for the species should not be allowed to occur.

O5-11B (Cont.)

Conclusion

Thank you for the opportunity to provide input for consideration in the preparation of the final Tehachapi Uplands Multi Species Habitat Conservation Plan and Environmental Impact Statement. Should you have any questions, I can be reached at (916) 313 5800 x105 of via email at pflick@defenders.org.

O5-12

Sincerely,

Pamela Flick
California Program Coordinator

Citations

Cushman, Samuel A. Effects of habitat loss and fragmentation on amphibians: a review and prospectus. 2006. Biological conservation. 128(2): 231 240

Hansen, R.W. and D.B. Wake. 2005. *Batrachoseps stebbinsi* Brame and Murray, 1968: Tehachapi slender salamander. Pp. 693 695 *in* Lanoo, M., ed. Amphibian declines: the conservation status of United States species. University of California Press, Berkeley. 1094 pp.

Nichols, Jeremy. Petition to List the Tehachapi Slender Salamander (*Batrachoseps stebbinsi*) as Threatened or Endangered under the U.S. Endangered Species Act. February 2006.

O5-13A

Sorenson, Kelly J., et al., Interactions Between California Condors and Powerlines in California. (abstract attached)

O5-13B

Stuart, et al. Status and Trends of Amphibian Declines and Extinctions Worldwide. Science Express. 14 October 2004.

O5-13C

Preferred Session: **Energy Development and Wildlife:** Linda Spiegel, California Energy Commission (CEC)

Type of Paper: **Oral Presentation**

Paper Title: **INTERACTIONS BETWEEN CALIFORNIA CONDORS AND POWERLINES IN CALIFORNIA**

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O5-14

Abstract

Ten powerline-related fatalities of California Condors reintroduced to the wild in California were recorded between 1993 and 2006. A review of condor-powerline fatalities in terms of age, sex, type of structure involved, distance away from release site, and other factors will be presented. In general powerline interactions, as a result of perching on poles, were common in the first few release cohorts. Aversion training utilizing electric shock and a simulated power pole for all release candidates was conducted for all cohorts since 1995. Ventana Wildlife Society biologists recorded time budgets for 3 pre-release candidates in a field aviary in Big Sur, California in late 2000 to determine response to electric shock stimuli and found a sharp decline in the amount of time perching and the number of landings on the simulated power pole. Powerline-related fatalities decreased since 1995, however mid-span collisions remains a challenge. Power line re-routing, installation of bird flight diverters and other mitigation measures by Southern California Edison and Pacific Gas and Electric Company have occurred in all locations where powerline-related fatalities were documented and proactively where the collision risk is high. Second only to lead poisoning deaths, powerline interactions remain a serious threat to the recovery of the condor.

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April 24, 2008

Mary Grim, Section 10 Program Coordinator
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825

Via email to tu--hcp--eis@fws.gov and via USPS

RE: Tehachapi Uplands Multi-species Habitat Conservation Plan

Dear Ms. Grim:

Defenders of Wildlife ("Defenders") is pleased to submit these scoping comments for consideration in the preparation of an Environmental Impact Statement (EIS) on the Tehachapi Uplands Multi-Species Habitat Conservation Plan (MSHCP). We incorporate by reference the comments we submitted during the Notice of Intent (NOI) proposing preparation of an Environmental Impact Statement (EIS) for the issuance of an incidental take permit (ITP) associated with a habitat conservation plan (HCP) for the endangered California condor developed by Tejon Ranch Corporation (69 Federal Register 35663; June 25, 2004). O5-15

Defenders of Wildlife is a non-profit, conservation organization with over one million members and supporters nationwide, more than 100,000 of which reside in California. Defenders is dedicated to protecting all wild animals and plants in their natural communities. To this end, Defenders employs science, public education, media, legislative advocacy, litigation, and proactive on-the-ground solutions in order to impede the accelerating rate of extinction of species, loss of biological diversity, and habitat alteration and destruction.

The HCP/ITP and Tejon Ranch development must be consistent with Condor recovery.

The Tejon rangelands have been, and will be important to the survival and recovery of the condor (as evidenced by its designation as critical habitat). Even "minor" developments may have major impacts to the condor. Condors are inquisitive animals, drawn to activity areas such as dispersed housing and recreation sites. When a condor has been behaviorally compromised through interactions with people or human structures, the condor may teach inappropriate behaviors to other condors through example and further perpetuate management problems, reducing the viability of the condor in the wild. Allowing development within the Tejon rangelands critical habitat area may seriously diminish the value of that critical habitat unit to the long-term conservation of the condor. O5-16

Thus, the question is raised by this project as to how the issuance of the condor incidental take permit and the proposed development by Tejon Ranch Corporation will be consistent with the Tejon rangelands critical habitat designation and the direction of the California Condor Recovery O5-17

Plan? The project and EIS should review the effects of the proposed project on critical habitat and the requirements set forth in the Condor Recovery Plan. The MSHCP/ITP and development should be consistent with Condor recovery.

O5-17 (Cont.)

There is a threshold question of whether or not take of condors should be permitted.

Many agencies and organization have worked for decades, at the cost of many millions of dollars, to captive-breed California condors for release to the wild. Today, there are approximately 60 individual condors in the wild in California, and the fledgling of the first wild-raised chick in California in more than 20 years is eagerly anticipated. However, the condor remains one of the most imperiled species in North America. Despite all of these efforts, the FWS is proposing to issue an incidental take permit for the condor to the Tejon Ranch Corporation. The loss of any condor in the wild is a serious matter, especially if that condor may be a wild-raised chick. Would not the avoidable loss of even one individual condor be jeopardy to the species in the wild? Thus, we are concerned that any level of incidental take would violate the standards of sections 7 and 10 of the ESA.

O5-18

In addition, and this relates to the overarching problem of lack of information about the project, the scoping notice fails to include any information of what kind or level of take of condors could be permitted under this project/permit. Without this information, it is difficult to understand (1) why there is even a need for an MSHCP/ITP and (2) how this project will affect the survival and recovery of the condor.

O5-19

The MSHCP must address the impacts of human disturbance on condors and other species.

Development within condor range may have serious impacts on condors and the efforts to recover these species. The MSHCP must review and address impacts from roads, powerlines, garbage, or other human-related disturbances.

On this point, the FWS California Condor Recovery Plan states that:

> The effects of human disturbance on nesting condors have been difficult to evaluate rigorously, and different observers have reached disparate conclusions. Koford (1953) documented numerous accounts of human disturbance at California condor nest sites. He reported that the responses of nesting birds were highly variable and hypothesized that the nature of the birds' reactions might depend upon the stage of nesting. Koford generally concluded that California condors were keenly aware of intruders, and would alter their behaviors if humans approached in sight within 555 m (500 yd) of a nest. In addition, Koford stated that California condors could be alarmed by loud noises from distances of over 1.6 kilometers (1 mi). Based on these observations, Koford recommended that human disturbance should be restricted within 1.6 km (1 mi) of active nest sites. Sibley (1969) found a correlation between the location of recently used California condor nest sites and the location and magnitude of human activity. He concluded that the greater the disturbance, either in frequency or noise level, the less likely California condors were to nest nearby. In 1984, a nest site located in a giant sequoia tree within mixed-conifer forest was subjected to a high degree of disturbance during the egg-laying period because it was

O5-20

> located on the edge of an active clear-cut timbering operation. Nevertheless, the breeding attempt continued successfully until the half-grown chick was removed from the nest to be added to the captive flock. Based on the variety of historical accounts, Snyder et al. (1986) concluded that tolerance to disturbance by nesting condors is likely to be a highly variable trait individually and that it is prudent to continue the current U.S. Forest Service restriction of human activities within 2.4 km (1.5 mi) of California condor nest sites on Forest Service lands.

O5-20 (Cont.)

FWS Condor Recovery Plan at 16-17.

Powerlines present another concern. There have been documented power-line related fatalities of California condors. Attached is an abstract detailing this issue. (See, "Kelly J. Sorenson, Burnett, Joseph L., et al., "Interactions Between California Condors and Powerlines in California.").

O5-21

Transparency in the development of the MSHCP is Critical.

Defenders urges that the process to develop the MSHCP is open and transparent to ensure a high level of confidence in the final MSHCP. We are concerned that the consultants hired by Tejon Ranch to do biological surveys are bound by confidentiality agreements. With such a restriction, it is unclear whether the information found by the biologist consultants will actually make it into the documents. We urge that all biological information found is included and made available to the public.

O5-22

In addition, an independent scientific advisory committee consisting of non-agency biologists, interested parties, and other non-Tejon biologists/consultants should be created to review species accounts and other related science-based information upon which the HCP is based.

O5-23

There is a Need for Full Biological Surveys for This Area.

Have all of the needed surveys been done to identify habitat needs of all species covered by this HCP? If so, does the public have access to that information? Given the rich biological diversity of this area, we urge that full biological surveys be conducted to ensure that we have the best available and most up-to-date information as this MSHCP is put together.

O5-24

The MSHCP Must Have Biological Goals and Objectives for all Covered Species.

The MSHCP should include clear biological objectives and goals for covered species and each species required habitat. Species that are rare or that have restricted ranges should have a higher standard than those that are more common.

O5-25

The MSCHP Must Have a Strong Adaptive Management and Monitoring Component.

The federal HCP Handbook says that the FWS should not approve an HCP using conservation strategies that have a low likelihood of success. HCP Handbook at 3-25. The California Endangered Species Act (CESA) also states, "[a]ll requirement measures shall be capable of successful implementation." Fish and Game Code § 2081(b)(2). "A key element of adaptive management is the establishment of testable hypotheses linked to the conservation strategies and

O5-26

their biological objectives." HCP Handbook at 3-25. In addition, the HCP should establish "threshold levels" that are "clearly defined in the HCP and based upon *measurable criteria*, and monitoring should be linked to those measurable criteria. The establishment of measurable criteria would dictate the type of monitoring, including the number of samples, distribution of samples and use of controls. Id. at 3-25 (emphasis added).

O5-26 (Cont.)

The MSHCP should incorporate a comprehensive adaptive management program prior to the plan being approved. Should monitoring data prove that the parameters of the MSHCP are not met (or new information becomes available), there should be a mechanism included to revoke the ITP in part or in its entirety.

O5-27

There Must Be Adequate Funding Assured to Carry Out the MSHCP.

In order to issue an incidental take permit, under both the federal and state ESA, the HCP must ensure that there is a reliable funding source for the plan's mitigation measures. See NWF v. Babbitt, 128 F.Supp.2d at 1291 (court held that the FWS acted arbitrarily when it issued an ITP for a plan that failed to identify the specific source of secured funding); Sierra Club v. Babbitt, 15 F.Supp.2d at 1282 (court held that the FWS could not rely on funding from an "unknown source for an unknown amount"). Therefore, funding assurances must be included to ensure conservation measures are carried out during the implementation of the MSHCP.

O5-28

There Must Be Adequate Assurances That Conservation Will Occur.

Hard line reserves/conservation areas must be delineated before any construction of Tejon Ranch's planned developments begins. Therefore, assurances must be made that the future preserve areas will be set aside before bulldozer blades break ground. Additionally, all preserve lands must be free of any other damaging activities, including off-highway vehicle (OHV) use.

O5-29

Conclusion

Thank you for the opportunity to provide input for consideration in the preparation of the Tehachapi Uplands Multi-Species Habitat Conservation Plan. We look forward to the inclusion of these comments in the forthcoming EIS. Please keep us informed of any future developments in this process. You can reach us at (916) 313-5800.

O5-30

Sincerely,

Kim Delfino
California Program Director

Pamela Flick
California Program Coordinator

Preferred Session: **Energy Development and Wildlife:** Linda Spiegel, California Energy Commission (CEC)

Type of Paper: **Oral Presentation**

Paper Title: **INTERACTIONS BETWEEN CALIFORNIA CONDORS AND POWERLINES IN CALIFORNIA**

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O5-31

Abstract

Ten powerline-related fatalities of California Condors reintroduced to the wild in California were recorded between 1993 and 2006. A review of condor-powerline fatalities in terms of age, sex, type of structure involved, distance away from release site, and other factors will be presented. In general powerline interactions, as a result of perching on poles, were common in the first few release cohorts. Aversion training utilizing electric shock and a simulated power pole for all release candidates was conducted for all cohorts since 1995. Ventana Wildlife Society biologists recorded time budgets for 3 pre-release candidates in a field aviary in Big Sur, California in late 2000 to determine response to electric shock stimuli and found a sharp decline in the amount of time perching and the number of landings on the simulated power pole. Powerline-related fatalities decreased since 1995, however mid-span collisions remains a challenge. Power line re-routing, installation of bird flight diverters and other mitigation measures by Southern California Edison and Pacific Gas and Electric Company have occurred in all locations where powerline-related fatalities were documented and proactively where the collision risk is high. Second only to lead poisoning deaths, powerline interactions remain a serious threat to the recovery of the condor.

Comment Letter O6

KERN COUNTY CNPS
California Native Plant Society

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Section 10 Program Coordinator
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Dear Ms. Grim:

The Kern Chapter of the California Native Plant Society is pleased to have the opportunity to reply to the Tehachapi Uplands Habitat Conservation Plan.

First, we believe that the comprehensive biological and physical database which Section 5 states exists, as well as the established resource database, should be available to the public before the Permit issuance, rather than in the first Annual Report. The public is unable to accurately respond to an HCP and EIS unless all of the data collected on a site is made available. No construction grading should be permitted before the entire database is made available to all, as this is the only way protection of species of concern can possibly be achieved. **O6-1**

Second, it is stated that ground disturbances are "not anticipated to exceed 3% of modeled suitable habitat." However, there is no statement of consequences if more than 3% of suitable habitat is disturbed. The USFWS must require and state a consequence for any additional destruction. **O6-2**

Third, we believe that all information on plant species in section 6, including in the summarizing Table 6.1, is compromised by opposing, or conflicting, sentences included in the discussion of every plant species of concern. They read:

"Because this species was found within the surveyed TMV Planning Area, the potential of this species to occur elsewhere within suitable habitat on non-surveyed portions of Covered Lands is high. However, because it is unlikely that all modeled habitat would be saturated and because it is assumed that some modeled habitat may not contain microhabitat required by this species, not all modeled habitat is expected to be occupied by this species." **O6-3**

In spite of the final phrase's admission that "not all modeled habitat is expected to be occupied by this species", the percentages of land available are still used as fact, rather than the hopeful guess that it is. Aspect is not considered on the maps, although it is mentioned in sections titled "Habitat Characteristics and Use", thereby acknowledging its critical importance to plants. The "science" of available habitat is mostly meaningless as presented. The Plan should be based on peer reviewed science, rather than project sponsored speculation.

The above conflict from section 6 is critical in yet another way. The only mitigation measure in Section 7 for each plant species of concern is fulfilled by the provision of Open Space, as per an "Implementing Agreement". As the mapped "suitable habitat" is meaningless, no real mitigation is offered to plants. In actuality this provides no sure protection for plants, because the percentages of habitat available is based on unproved assumptions. This "one method fits all" mitigation measure is unacceptable. Further surveys must be done in the appropriate season, in the Open Space/mapped areas, and the plants found, before these "mitigations" are acceptable. O6-4

While we do not accept the theory upon which the use of the report's vegetative maps are based, if they are to be used, they should be prepared by *independent* biologists and GIS specialists, not Tejon Ranch Corporation employees, to avoid any conflict of interest. O6-5

Fourth, we have doubts about the usefulness of the following statement (page 7-80), except to the developer. O6-6

"No take is allocated for plants in this MSHCP and impacts to plants, if observed, will be reported qualitatively and as part of the annual assessment of impacts to vegetation communities."

How can any loss of a plant species be reported qualitatively through reports of impacts to vegetative communities? Why should losses be reported qualitatively, and habitat available be reported with speculative quantities? The losses should be reported by SPECIES, since the species are what is of concern.

Our concerns for specific plants include the following:

Round-leaf Filaree *Erodium macrophyllum* O6-7

While the TUHCP reports that two populations will be saved, it appears that about 70% of the observed individuals will be lost to development, since it is reported that on Covered Lands, 11 areas of 430-730 individuals were observed, and inferred that 9 occurrences of 310-510 individuals would be lost. This is an unacceptable loss of *Erodium macrophyllum*, as it is "considered a seriously endangered plant in California." (page 6-59) How will the public know that this loss will be truly mitigated?

Tejon Poppy *Eschscholzia lemonii* ssp *kernensis* O6-8

On pages 6-63 and 6-64 conflicting reports of sightings of the Tejon Poppy in the Covered Area cause us to wonder about the veracity of the report on this species.

"No individuals of Tejon poppy have been observed within the Covered Lands, so the only loss would be that of modeled habitat until or unless future surveys reveal the species' presence in areas where Covered Activities would remove them.

Because this species was found within the surveyed portion of Covered Lands, the potential of this species to occur elsewhere within suitable habitat on non-surveyed portions of Covered Lands is high…"

In conclusion, we believe the best protection for all of the species of concern would be to protect all critical habitat of the California Condor. Again, thank you for the opportunity to respond to the TUHCP. O6-9

Lucy G. Clark
Conservation Chairperson
Kern Chapter, California Native Plant Society

Comment Letter O7

SCOPE
Santa Clarita Organization for Planning and the Environment
TO PROMOTE, PROTECT AND PRESERVE THE ENVIRONMENT, ECOLOGY AND QUALITY OF LIFE IN THE SANTA CLARITA VALLEY
POST OFFICE BOX 1182, SANTA CLARITA, CA 91386

April 28th, 2009

Attn: Mary Grim
Pacific-Southwest Regional Office
2800 Cottage Way, Room W-2606
Sacramento, CA 95825

Via US mail and email to: fw8tumshp@fws.gov

Re: Request for extension of time to comment on the HCP for the Tejon Ranch Project

Dear Ms. Grim:

We request that you extend the time to comment on this project for an additional 120 days beyond the May 5th deadline.

The Tejon Ranch proposal is an enormous project that will have permanent and irreversible impacts on animals and plants that currently inhabit this area, including several endangered and high profile species. We are sure that you will agree that it is important that we take all precautions to reduce these impacts to the greatest extent possible. In the time period of the twenty-five-plus- year estimated development window for this project, an additional 120 days to ensure that we have done the best we can, is a very short inconvenience. **O7-1**

We believe that this extension is warranted because, as you are well aware, this document is voluminous. It contains thousands of pages of information that must be reviewed for unbiased accuracy and to ensure that all relevant information has been included. Such a remark may seem cynical, but we find it difficult to apologize for such cynicism. We have consistently requested that such documents be prepared by an independent organization rather than under the auspices and funding of the party interested in their approval. In other situations, this circumstance has resulted in the preparation of insufficient reports. With all that is at stake, we want to try to make sure that doesn't happen for the habitat in the area of the Tejon Ranch. **O7-2**

A cursory review indicates that some of the data seems to be inconsistent and must be researched. Experts need time to check the accuracy of this data and evaluate the inconsistencies.

Finally, we are especially concerned that the current deadline would expire before the USGS Condor study is completed. The area of the Tejon Ranch is prime condor habitat. Millions of dollars have been spent to try to save this magnificent bird from extinction. It is inconceivable to us that the Department of Fish and Game would preclude the inclusion of such a study for such an important and relevant issue by enforcing an unreasonable deadline for the comment period. **O7-3**

Thank you in advance for honoring our request.

Sincerely,

Lynne Plambeck
President

Comment Letter O8

SCOPE
Santa Clarita Organization for Planning and the Environment
TO PROMOTE, PROTECT AND PRESERVE THE ENVIRONMENT, ECOLOGY
AND QUALITY OF LIFE IN THE SANTA CLARITA VALLEY
POST OFFICE BOX 1182, SANTA CLARITA, CA 91386

July 1, 2009

Mary Grim
Section 10 Program Coordinator
US Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825
Sent via email: fw8tumshcp@fws.gov

Craig M. Murphy, Supervising Planner
Kern County Planning Department
2700 "M" St., Suite 100
Bakersfield, CA 93301-2370
Sent via email: murphyc@co.kern.ca.us

RE: Joint Comments on the Tehachapi Upland Multi-Species Habitat Conservation Plan Draft Environmental Impact Statement and the Tejon Mountain Village Draft Environmental Impact Report ("DEIS/DEIR")

Santa Clarita Organization for Planning and the Environment is a non-profit California Corporation founded in 1987 to monitor planning and conservation issues that affect the Santa Clarita Valley. Although the proposed Tehachapi Upland Multi-Species Habitat Conservation Area and Tejon Mountain Village is not within the immediate area of the Santa Clarita valley, at least some of the potential future residents would commute to jobs in Los Angeles. Those commutes would have a deleterious effect on the already impaired air quality in our community. Cumulative impacts to global warming and the project's proposed use of state water supply will also affect our area as overall water availability is reduced by drought. Any failure of the of the Tehachipi HCP to protect endangered species, and especially the California Condor, will diminish the quality of life for all Californias by the loss of these rare and special plants, animals and birds

O8-1A
O8-1B
O8-1C
O8-1D

Although we appreciate the short extension of time that your agencies allowed for the review of the EIR/EIS for this proposal, we believe that that time was still not adequate. Several large EIRs all managed by Dudek and Associates, both in our area and further up the I-5, have all been released simultaneously. These include Tejon Mountain Village and Frazier Park Estates, the EIS for the Tehachapi Uplands Multispecies HCP and the EIS for the Newhall Ranch Army Corps permit in the Santa Clarita area. It seems more than coincidental that all these documents were released for public review within a month or two of each other. No one can read and digest these more than 50,000 cumulative pages, verify the data and provide meaningful comments on them in the short time period allowed for public review.

O8-2

Therefore, we reserve the option of presenting additional comments as we complete our review of the Tejon Mountain Village DEIR. We understand that such comments may not beincluded in a

O8-3

circulated final EIR/EIS, but as you know, your agencies will still be required to consider all comments up to the certification of the evironmental documents. O8-3 (Cont.)

Comments on Global Warming

The following comments were prepared as a sign on letter and thus may be submitted by other organizations as well as ours. However, in an effort to ensure that they become part of the the Administrative record and that our group is "on record" as submitting comments on this important proposal, we are submitting them separately under our own letterhead. O8-4

Since the Tehachapi Upland Multi-Species Habitat Conservation Plan ("MSHCP" or "Plan") Draft Environmental Impact Statement ("DEIS") and the Tejon Mountain Village ("TMV") Draft Environmental Impact Report ("DEIR") are interdepent in the sense that the HCP would not be necessary without the proposed development and Tejon Mountain Village cannot receive approval without a functioning and permitted HCP, we believe it is necessary to submit comments on both projects simulateously. O8-5

After careful review, we believe that the DEIS/DEIR fails to comply with the mandates of the California Environmental Quality Act ("CEQA") and the National Environmental Protection Act ("NEPA"). It uses an improper baseline in the No Action/No MSHCP Alternative and does not accurately identify or analyze the significant environmental impacts that would result from black carbon emissions, construction and operations, global warming, or induced growth associated with the proposed Plan and TMV development. The DEIS also fails to provide feasible mitigation measures for air quality and global warming impacts. O8-6

The environmental review process is intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."[1] It is especially important that the DEIS/DEIR--given the scale of the MSHCP and TMV--provides all the information required by CEQA and NEPA to enable decision-makers and the public to understand the significant environmental impacts of the proposal. O8-7

I. The DEIS Fails to Use an Accurate No Action/No MSHCP Alternative.

The DEIS for the MSHCP is fundamentally flawed because it relies upon build out of "the ranch that would occur consistent with the Kern County General Plan"[2] for its "No Action/No MSHCP Alternative." This masks the environmental impacts that would result from the MSHCP. Environmental review must determine significance in relation to an analysis of the physical conditions in the project area as they exist at the time of the notice of preparation. The MSCHP cannot rely on future conditions (like build out of the General Plan) as a baseline. The DEIS's use of an improper baseline distorts the entire environmental review. O8-8

II. The DEIS/DEIR Fails to Consider the Impacts of Black Carbon Emissions. O8-9

[1] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 392 (1988). O8-7A

[2] DEIS 3.2.2 O8-8B

a. The DEIS/DEIR Must Include an Analysis of Black Carbon Emissions.

The DEIS/DEIR fails to address black carbon, an important short-lived pollutant that significantly contributes to global and regional warming. Black carbon is produced by incomplete combustion: it is the black component of soot. Although combustion produces black and organic carbon, the proportion of black carbon produced by burning fossil fuels, is much greater than that produced by burning biomass.

O8-9 (Cont.)

Black carbon is a global warming pollutant for several reasons. 1) It is highly efficient at absorbing solar radiation thus heating the surrounding atmosphere. 2) Atmospheric black carbon absorbs reflected radiation from the surface. 3) When black carbon lands on snow and ice, it reduces the reflectivity of the white surface. This causes increased atmospheric warming and accelerates the rate of snow and ice melt. 4) It evaporates low clouds. Due to black carbon's short atmospheric life span and high global warming potential, decreasing black carbon emissions offers an opportunity to mitigate the effects of global warming trends in the short term.[3]

O8-10

Black carbon is considered a "short-lived pollutant" because it remains in the atmosphere for only about a week in contrast to carbon dioxide, which remains in the atmosphere for over 100 years. Furthermore, the global warming potential of black carbon is approximately 760 times greater than that of carbon dioxide over 100 years and approximately 2200 times greater over 20 years.[4] It is estimated that black carbon is the second greatest contributor to global warming after carbon dioxide.[5]

O8-11

Unlike traditional greenhouse gases, which become relatively uniformly distributed and mixed throughout the Earth's atmosphere, black carbon holds a regional influence. The impacts of black carbon on a regional level include both atmospheric heating, as discussed above, and hydrological changes. It is likely that the effects of Black carbon in California will be comparable to its effects studied in Africa and Asia.[6] This includes intensified drought and reduced Sierra snowpack.

O8-12

Black carbon has a number of negative health effects including an increased mortality rate,[7] chronic bronchitis, blood pressure, and infant mortality due to pneumonia.[8] These effects are in addition to the health effects associated with particulate matter, of which black carbon is one constituent.

O8-13

b. The DEIS/DEIR Must Quantify Black Carbon Emissions.

O8-14

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[3] Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, Nature Geoscience 1:221-227 (2008).

[4] Reddy, M.S. & Boucher, O., Climate impact of black carbon emitted from energy consumption in the world's regions. Geophys. Res. Letters. 34: L11802 (2007).

[5] Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, Nature Geoscience 1:221-227 (2008).

[6] Id.

[7] Maynard D. et al., *Mortality risk associated with short-term exposure to traffic particles and sulfates.* Environ. Health Perspect. 115:751-755 (2007).

[8] Schwartz J. *Testimony for the Hearing on Black Carbon and Arctic, House Committee on Oversight and Government Reform United States House of Representatives* (Oct. 18, 2007).

O8-10A

O8-11A

O8-11B

O8-12A

O8-13A

O8-13B

Analyzing particulate matter (PM) is insufficient to address black carbon. PM refers to the particles that make up atmospheric aerosols including sulfates, nitrates, and carbon compounds. Because PM can be reduced through mitigation of other constituents of PM rather than black carbon as well as its' significant effects on global warming and health, it is essential that black carbon emission reduction strategies be considered independently from PM reductions.

O8-14 (Cont.)

Methods are available to specifically quantify black carbon emissions. The DEIS/DEIR makes no attempt to quantify black carbon and this omission must be rectified. Like greenhouse gas emissions, black carbon emissions from various types of engines and activities can be estimated through numerical calculations.[9] Considering the importance and ability of quantifying black carbon emissions, the DEIS/DEIR should be revised to incorporate an analysis of the MSHCP's contribution of black carbon.

O8-15

III. The DEIS/DEIR Fails to Consider the Full Impacts of Construction and Operations.

a. The DEIS/DEIR Must Include an Analysis of the Manufacture of Concrete for Construction.

The DEIS/DEIR fails to consider the impacts associated with the manufacture of concrete which "accounts for roughly 3% of California's greenhouse gas emissions."[10] The Lawrence Berkeley National Laboratory and others have developed methods for analyzing the lifecycle emissions of concrete manufacture.[11]

O8-16

b. The DEIS/DEIR Must Include an Analysis of Construction Emissions and Operational Emissions Combined.

This project entails significant construction to take place over 20 years. Thus, construction and operations emissions will take place concurrently. Given the significant construction involved in the development of the MSHCP, the DEIS/DEIR must include an analysis of these emissions combined. Additionally, this analysis should include information on peak daily construction and peak daily operational emissions combined.

O8-17

IV. The DEIS/DEIR Fails to Provide an Accurate Picture of the Project's Growth-Inducing Effects.

An EIS must discuss how the proposed project (if implemented) could induce growth, through directly or indirectly facilitating or removing obstacles to population growth or new development in the surrounding environment.[12] This includes projects that: 1) foster economic or population growth or additional housing; 2) remove obstacles to growth; 3) tax

O8-18

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[9] Bond T. et al., *A technology-based Global Inventory of Black and Organic Carbon Emissions from Combustion*. J. Geophys. Res., 109: D14203 (2004).

[10] Manaset et al. *Reducing Greenhouse Gas Emissions through Product Life Cycle Optimization*, Ernest Orlando Lawrence Berkeley National Laboratory, Environmental Energy Technologies Division, 2005.

[11] Id.; Flower 2007. Flower DJM, Sanjayan JG (2007): Green House Gas Emissions due to Concrete Manufacture. Int J LCA 12 (5) 282–288

[12] Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337.

O8-15A

O8-16A

O8-16B

O8-18A

community services or facilities to such an extent that new services or facilities would be necessary; or, 4) encourage or facilitate other activities that cause significant environmental effects.[13] Although a project's growth-inducing impacts may not be adverse, secondary impacts (e.g., loss of open space/habitat/agricultural lands, air quality, transportation, etc.) may be significant and adverse and must be represented in an EIS.

O8-18 (Cont.)

NEPA requires environmental reviews to address and describe the indirect effects of a project "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."[14] Under NEPA, indirect effects are those "growth inducing effects and other related effects on air and water and other natural systems, including ecosystems."[15] The GHG emissions emanating from the increased vehicle miles traveled to and from the proposed developments are considered indirect effects, as they are "father removed in distance," "reasonably foreseeable," and are considered "growth inducing effects" since they result from the new developments.

O8-19

An adequate growth-inducing impacts analysis should include: 1) estimating the amount, location, and time frame of growth that may occur as a result of the project (e.g., additional housing, infrastructure, etc.); 2) applying impact assessment methodology to determine the significance; and 3) identifying mitigation measures or alternatives to address significant secondary or indirect impacts. The MSHCP DEIS/DEIR fails to analyze the project's growth-inducing impacts; this must be remedied.

O8-20

V. The DEIS/DEIR Fails to Adequately Set Forth the Threat of Greenhouse Gas.

a. The Greenhouse Gas Analysis and Associated Mitigation Measures Are Inadequate Under CEQA and NEPA.

The DEIS/DEIR's exceedingly cursory summary on Climate Change and Greenhouse Gases (3.3.7) is inadequate and fails to fulfill the informational requirements of CEQA and NEPA. Although the California Climate Change Center's figures on projected warming scenarios are included, there is no discussion of what the consequences of those scenarios may be or how global warming will impact the state, the nation, and the world. An "EIR must demonstrate that the significant environmental impacts of the proposed project were *adequately investigated and discussed* and it must permit the significant effects to be considered in the *full environmental context*."[16] The DEIS/DEIR should, at a minimum, describe the cumulative impacts of global warming on the environment and how increasing GHG emissions will affect those impacts. Furthermore, an EIS "must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published…or…at the time the environmental analysis is commenced, from both a local and regional perspective."[17] The DEIS/DEIR must be revised to adequately inform the public about the risks associated with increasing GHG emissions.

O8-21

[13] CEQA Guidelines § 15126.2(d).
[14] 40 C.F.R.1508.8.
[15] Id.
[16] CEQA Guidelines, § 15125(c), (emphasis added).
[17] CEQA Guideline § 15125(a).

O8-18A
O8-19A
O8-19B
O8-21A
O8-21B

The DEIS/DEIR should include numerical estimates of the extent of projected impacts, including specific information about the projected impacts in California caused by GHG emissions. For example, it should describe that loss for the Sierra snowpack is estimated to be between 30-90%, depending on the extent to which emissions are reduced.[18] Additional impacts projected for California by the end of the century include:

- Temperature rises between 3-10.5°F;
- 6-30 inches or more of sea level rise;
- 2-4 times as many heat wave days in major urban centers;
- 2-6 times as many heat-related deaths in major urban centers;
- 1.5-5 times more critically dry years;
- 25-85% increase in days conductive to ozone formation;
- 3-20% increase in electricity demand;
- 10-55% increase in the expected risk of large wildfires; and
- 7-30% decrease in forest yields (pine).

O8-22

By detailing the range of proposed impacts and identifying that the higher-range of impact estimates are projected if GHG emissions continue to increase under a "business as usual" scenario, decision-makers and the public will be better informed of the magnitude of the climate crisis and the urgency with which it must be addressed.

O8-23

Furthermore, the DEIS/DEIR should consider supplementing its description of global warming impacts with data from the recently released report of the Committee on Environment and Natural Resources, the *Scientific Assessment of the Effects of Global Change on the United States* (May 2008).

O8-24

Additionally, the DEIS/DEIR also fails to analyze the greenhouse gas emissions associated with "Plan-Wide Activities." This is also required under CEQA.

O8-25

b. The MSHCP's Impact on Global Warming is Also Significant Under NEPA. Similarly, NEPA requires an EIS to "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration."[19] Because climate change is serious, its impacts will be felt worldwide, and GHG emissions are cumulative in nature, the DEIS/DEIR must describe the affected environment in sufficient detail to convey the potential risks of increasing GHG emissions.

O8-26

Although the DEIS provides some inventory consistent with the California Office of Planning and Research technical CEQA guidelines, it fails to recognize the significance of GHG emissions under NEPA. The Ninth Circuit in *Center for Biological Diversity v. National Highway Traffic Safety Administration* recognized the legal necessity of evaluating the cumulative significance of GHG emissions under NEPA, despite the absence of a quantitative threshold, stating "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."[20]

O8-27

[18] California Climate Change Center, "Our Changing Climate, Assessing the Risks to California." (2006).
[19] CEQA Regulation, §1502.15.
[20] 508 F.3d 508, 550 (9th Cir. 2007) (holding an EA inadequate for inadequate cumulative

O8-22A
O8-26A
O8-27A

"Thus, the fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency's] control . . . does not release the agency from the duty of assessing the effects of *its* actions on global warming within the context of other actions that also affect global warming. The cumulative impacts regulation specifically provides that the agency must assess the impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions.*"[21]

O8-27 (Cont.)

Furthermore, by substantially increasing California's existing emission levels, the MSHCP threatens the successful implementation of the California Global Warming Solutions Act (AB 32, 2006) and Executive Order S-3-05, which require reductions of current levels of emissions in California.[22] Accordingly, a revised DEIS/DEIR must be prepared that adequately analyzes the cumulative significance of the MSHCP's GHG emissions on global warming under NEPA.

O8-28

VI. DEIS Fails to Provide Feasible Mitigation Measures and Alternatives.

The MSHCP's DEIS must provide adequate measures for air quality (including black carbon) and greenhouse gas emissions. Some measures to be considered are included below:

- **Use of Renewable Power for Electricity Generation:**

The feasibility of generating on-site and off-site renewable electricity generation should be explored. The MSHCP should consider and maximize the use of solar power as a self-generated source of renewable energy. The installation of photovoltaic panels on all buildings, parking lots or carports within the plan, as well as to houses, schools and buildings within the MSHCP could make a large impact on the amount of carbon emissions for the project.

  - Photovoltaic panels are a renewable, clean energy source that would provide 3.6 MWh/year per average household for 250 square feet of PV panels, saving approximately over 3,000 pounds of CO2 and over a thousand dollars per average household annually.[23]
  - The solar industry is one of the few construction sectors currently growing, with solar companies employing between 16,500-17,500 California workers and expecting to hire approximately 5,000 more in the next year. Most of these jobs are in installation, requiring limited training and providing annual salaries ranging from $31,200 to $60,000.[24]

O8-29

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impacts analysis).

[21] 508 F.3d 508, 550 (9th Cir. 2007) (holding an EA inadequate for inadequate cumulative impacts analysis).

[22] *See* 40 C.F.R. § 1508.27(10) (factor in significance determination includes whether action threatens to violate federal, state, or local law or requirements); *see also* Executive Order S-3-05 (June 1, 2005) (setting greenhouse gas emissions reduction targets for California); Control of Emissions From New Highway Vehicles and Engines, 68 FR 52922 (September 8, 2003) (affirming EPA's recognition of climate change and the need to reduce greenhouse gases).

[23] Assumptions: 50% capacity, annual usage is 7200 KWh/year, average electricity rate is $0.1738/kWh. http://www.findsolar.com/index.php?page=rightforme

[24] Baker, David. *Solar industry needs workers.* San Francisco Chronicle. May 8, 2008. http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/10/BUGD10JVGP.DTL

O8-27A (Cont.)
O8-27B
O8-28A
O8-29A
O8-29B

- **Utilize Recycled Materials:**

Use of recycled materials will lessen the carbon footprint of the MSHCP. The DIES should commit to using recycled materials whenever possible in the construction and operation phases of the MSHCP. O8-30

- **Construction Equipment:**

Equipment[25] greater than 25 horsepower must:

(1) Meet current emission standards[26] *and*

(2) Be equipped with Best Available Control Technology (BACT)[27] for emissions reductions of PM and NOx, *or*

(3) Use an alternative fuel. O8-31

- **Preferential Contracting with Clean Truck Companies:**

Preferential contracting with the cleanest trucking companies for construction can provide incentives for additional air quality and greenhouse gas reductions. O8-32

- **Diesel Trucks:**

On-road trucks used at construction sites, such as dump trucks, must:

(1) Meet current emission standards, *or*

(2) Be equipped with BACT[28] for emissions reductions of PM and NOx, *and*

(3) Any trucks hauling materials such as debris or fill must be fully covered while operating off-site (e.g. in transit to or from the site). O8-33

- **Generators:**

Where access to the power grid is limited, on-site generators must:

(1) Meet the equivalent current off-road standards for NOx, *and*

(2) Meet a 0.01 gram per brake-horsepower-hour standard for PM, *or*

(3) Be equipped with Best Available Control Technology (BACT) for emissions reductions of PM. O8-34

- **Special Precautions Near Sensitive Sites:**

All equipment operating on construction sites within 1,000 feet of a sensitive receptor site (schools, playgrounds, etc.)[29] should either:

(1) Meet US EPA Tier IV emission standards *or*

(2) Install ARB Verified "Level 3" controls (85% or better PM reductions), and

(3) Notify each of those sites of the project, in writing, at least 30 days before construction activities begin.[30] O8-35

VII. A Revised Draft EIS/EIR Must Be Prepared and Re-circulated. O8-36

[25] Equipment refers to vehicles such as excavators, backhoes, bulldozers propelled by an off-road diesel internal combustion engine. O8-31A

[26] These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine standards can also be accessed at http://www.dieselnet.com/standards/. Currently all new equipment is meeting the US EPA Tier II standards and most equipment also meets Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement. O8-31B

[27] Here BACT refers to the "Most effective verified diesel emission control strategy" (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle. O8-31C

[28] Here BACT also refers to most effective VDECS as defined by the California Air Resources Board (CARB). O8-33A

[29] Sensitive sites are defined and described in the CARB Air Quality and Land Use Planning Guidelines, 2005; http://www.arb.ca.gov/ch/landuse.htm. O8-35A

[30] Notification shall include the name of the project, location, extent (acreage, number of pieces of equipment operating and duration), any special considerations (such as contaminated waste removal or other hazards), and contact information for a community liaison who can answer any questions. O8-35B

Due to the inadequacies highlighted above, the Tehachapi Upland Multi-Species Habitat Conservation Plan draft Environmental Impact Statement and the Tejon Mountain Village draft Environmental Impact Report cannot form the basis of a final EIS/EIR.

O8-36 (Cont.)

Moreover, the DEIS/DEIR states throughout the document that "[w]ithout additional detailed information about the specific nature of development that would occur, use of the default assumptions is appropriate."[31] Therefore, the significant impacts highlighted in the Tejon Mountain Village DEIR must be included in the MSHCP DEIS.

O8-37

Thank you for allowing us to participate in your planning process.

Sincerely.

David Lutness

David Lutness
Corresponding Secretary

[31] DEIS/DEIR 4.3.2

O8-37A

Comment Letter O10

TriCounty Watchdogs

...protecting mountain resources and communities in Kern, Los Angeles, and Ventura Counties.

Fish and Wildlife Service
Pacific-Southwest Regional Office
Attn: Mary Grim
2800 Cottage Way, Room W-2606
Sacramento, CA 95825

April 20, 2009

TCW
11667 Steinhoff Rd
Frazier Park
California 93225
www.tcwdogs.org

Dear Ms. Grim,

TriCounty Watchdogs (TCW) is a non-profit public interest environmental organization operating in the Mountain Communities, a number of small communities located in the unincorporated area of Kern, Los Angeles, and Ventura counties. Included are Frazier Park, Pine Mountain Club, Lockwood Valley, Cuddy Valley, Lake of the Woods, Gorman, Lebec, Grapevine, and Neenach.

In our area we have Tejon Ranch, the Tejon Pass, the San Andreas and Garlock Faults, the Tehachapi, Tecuya and San Emigdio Mountains, and *Iwhinmu'u* (Mount Pinos) and *Tashololo* (Frazier Mountain), the center of the Chumash universe. The area measures about 500 square miles, and less than 10,000 people live here permanently. For your information, we enclose a copy of our recent newsletter.

It goes without saying that TCW is interested in proposed developments in our area, and in particular in the developments on the Tejon Ranch lands. We study the relevant documents, discuss them, and participate in the public CEQA and NEPA process. In this context we have downloaded and are studying the Draft EIS and Draft Tejon MSHCP.

O10-1

It seems to us that there are some serious problems with these documents, and with the nature and feasibility of the public input process. Because of those reasons, detailed below, we request for an extension of the comment period for three months, to August 7, 2009.

O10-2

TriCounty Watchdogs

...protecting mountain resources and communities in Kern, Los Angeles, and Ventura Counties.

TCW
11667 Steinhoff Rd
Frazier Park
California 93225
www.tcwdogs.org

First, the documents are voluminous and complicated. For a small volunteer organization it is virtually impossible to adequately review all of them in the provided time frame of less than three months. We note that Tejon Ranch Company (TRC) and FWS have been working on these documents for about 10 years, and providing the public with such a small comment window obviously biases the process. O10-3

Second, as detailed in our local newspaper, the *Mountain Enterprise* (I enclose/ attach the relevant articles), the documents appear to be poorly edited, proofed, and coordinated. The fact that a large federal agency, a large company, and an expensive consultant cannot put together a consistent and unambiguous version of the documents testifies to their complexity. O10-4

Third, although TRC is asking for the ITP in connection with its historical activities (farming, grazing, minerals), it is clearly the case that the driving reason behind the request is proposed development, in particular Tejon Mountain Village (TMV). At the moment, the only information the public has about TMV is a Notice of Preparation under CEQA that came out about five years ago. There is no Specific Plan, and there is no Draft Environmental Impact Report. Thus it is impossible for the public to verify if the statement in the HCP and the EIS correspond with what will actually go into the eventual permits, which will undoubtedly be influenced by the public input in the CEQA process. The same thing is true for other cumulatively planned developments in the area, such as Centennial, Grapevine, Gorman Ranch, Cordoba Village, Frazier Park Estates. Without more information about these projects, it is impossible to gauge the cumulative impact of development on the HCP area. O10-5

Fourth, we know that since 1997 TRC and FWS have been in litigation over this ITP/HCP, and over the status and protection of the California Condor in the HCP area. The 1999 MOU of TRC/FWS states that *"The parties shall work cooperatively to prepare the HCP and other documentation in support of the proposed ITP, generally in accordance with the work plan to which they have agreed."* It is impossible for the public to understand the precise relationship between FWS and TRC without having access to the settlement documents in O10-6

TriCounty Watchdogs

...protecting mountain resources and communities in Kern, Los Angeles, and Ventura Counties.

TCW
11667 Steinhoff Rd
Frazier Park
California 93225
www.tcwdogs.org

this case. We cannot possibly know if and to what degree FWS can independently represent the public interest if we do not know what the two parties have actually agreed to. We do not necessarily expect a cooperative relationship between a party whose activities threaten endangered species and a party whose duty it is to protect these species.

O10-6 (Cont.)

Fifth, we have problems with the timing of the release of the HCP/EIS documents to the public. The sloppiness of the documents suggest that they were released in haste. We cannot help but suspect this may have to do with the change of administration in Washington, the possible freeze of large development projects with huge FEIS impacts by the Obama administration, and the prospect of further environmentally propitious changes in the federal agencies involved.

O10-7

For these five reasons, we think that an additional three months extension of the public comment period is a reasonable request. It will not be a substantial delay, given the ten year time frame used for preparation of the documents that the developers used, the 50 year time frame requested for the ITP, and the 150 year time frame used planning developments around Castac Lake and Bear Trap Canyon.

O10-8

Sincerely,

Jan de Leeuw,

For Executive Board, TCW

Printed From The Mountain Enterprise
2009-04-10

Habitat Plan and Federal Analysis Show Major Flaws

Top, Katy Penland and Lynn Stafford (l-r) review maps and documents from the Tejon Mountain Village Condor habitat plan. Bottom, Penland has been carefully reviewing the documents over five weeks. She has disappointing news.

Tejon Mountain Village Special Report and Commentary

By Patric Hedlund with Katy Penland

On March 6 an 18-pound box was delivered by Federal Express to *The Mountain Enterprise* from the United States Fish and Wildlife Service (FWS). It wasn't a lead meteorite from outer space or an orphaned bear cub, but it was as heavy

Inside the box was the hard copy of a four-volume set of documents that, if printed from the online version at the FWS website, would total 5,200 pages of maps and data—equal to 10 reams of paper. This is the "Tehachapi Uplands Multispecies Habitat Conservation Plan" (HCP).

The window for public comment during this phase of the permitting process closes on May 5.

We requested these printed and bound documents so we could report to the public about what is contained in Tejon Ranchcorp's plans for endangered and threatened species whose critical habitat happens to be where the developers wish to build Tejon Mountain Village. The box also contained the HCP's companion document, called the draft Environmental Impact Statement (EIS). The National Environmental Policy Act (NEPA) requires that the federal agency analyze the impact of the developer's habitat conservation plan in

O10-9

the EIS.

So, early in March, we allocated several hours a week of a reporter's time to review the documents. Katy Penland was methodical, taking careful notes, starting with the condor section of the plan. Very quickly she ran into an unexpected barrier. When we placed the maps side by side and began reviewing the text of the HCP, comparing text in one section to that in another, then comparing the text to the maps, and maps to maps, we began finding significant discrepancies and contradictions in the HCP documents, making it virtually unintelligible.

We expected that the draft EIS, in its critical analysis, would point out these errors and comment upon them, but when we checked, we found they did not. Worse, the draft EIS introduces layers of new contradictions.

Both the draft EIS and HCP (and their maps) fail to use consistent labeling nomenclature, make errors in simple arithmetic, present conflicting references to critical habitat for the California Condor and equally confused references to plans for Tejon Mountain Village.

We asked a professional conservation biologist to review our findings. Lynn Stafford has 19 years of experience as a professional consultant in field biology, much of it working with environmental regulatory documents. We sought to verify whether what we marked as "fatal flaws" will indeed make it nearly impossible for the public to read and comment on the plan.

Detailed notes of some of our findings appear below so our readers can see for themselves the problems presented in these documents at the most preliminary level.

Commentary:

After 100 hours of effort among three people, we conclude these documents have not been proofread responsibly. They appear to have been prematurely released to the public for comment. As reporters, this is a disappointment. The stakes are high for the developer, for the endangered species and for the people of California.

We've been told that years have been spent developing these plans. The cost may be several million dollars. The consulting firm which prepared the HCP ("with technical assistance from U.S. Fish and Wildlife Service") is named DUDEK. Peter Bloom of Bloom Biological, Inc. is the wildlife biologist (but not a condor specialist) who prepared the condor habitat conservation and management section. The DEIS was prepared for FWS by ICF Jones & Stokes.

Meanwhile, we've learned of at least two parties, the Center for Biological Diversity (CBD) and the TriCounty Watchdogs, that have asked for the public comment period to be extended.

More time may not be the answer. Recall and reissue, after proofreading and correction, may be needed.

We were told by Lois Grunwald of FWS on January 23, "This notice slipped through from EPA...we weren't prepared to issue our document..but we were told to release this because it was publicized in the Federal Register today."

If these reports were rushed through the federal pipeline despite the two-day-old Obama administration's order to freeze such releases pending review, perhaps they are not finished documents.

FWS and Tejon Ranchcorp have been asked to respond to our preliminary findings. Next week we will carry their replies.

O10-9 (Cont.)

As we were going to press, Lois Grunwald from the Fish and Wildlife Service asked us to include this note from her: "Public participation is important. We encourage anyone with an interest to read the draft conservation plan and DEIS and provide us with their comments."

O10-9 (Cont.)

A Preliminary Sampling of Discrepancy Notes

Introduction:

Katy Penland, who has worked with the U.S. Forest Service, Department of Commerce and government contractors on wildlife surveys, and has directed a conservation organization prior to working as a reporter, alerted the editor and publisher of T*he Mountain Enterprise* that preliminary review of Tejon Ranchcorp's Tehachapi Upland Multispecies Habitat Conservation Plan (TUMSHCP or HCP) and the draft Environmental Impact Statement (EIS) documents released for public comment by the United States Fish and Wildlife Service (FWS) contained contradictory labels, inconsistent naming protocols and basic errors which present a steep barrier to the public's ability to comment on the data presented in 5,200 pages of maps and text.

Lynn Stafford, a professional field biologist, was asked by *The Mountain Enterprise* to help the editor review Penland's initial findings regarding discrepancies in the HCP and DEIS. Stafford has been working with government and industry habitat analysis documents for 19 years. He provides professional environmental monitoring and biological surveys from the field for large infrastructure construction projects such as dams, highways and power plants. We asked him to review, step by step, page by page, Penland's initial findings.

O10-10

Here is a sampling of these notes, to illustrate the nature of the discrepancies we found throughout the documents in our preliminary survey of the sections referring to the California Condor. We conclude that such flaws—which proofreading and correction could have addressed before release to the public—present an effective barricade against public comment on the data presented in the sections of the DEIS and the HCP we've attempted to review so far. This raises a substantial concern that such internal contradictions may impact the validity of the process of public review itself.

The public comment period for the draft documents closes on May 5. Our time has been consumed in reporting fundamental discrepancies in the documents rather than being able to report the terms and conditions proposed by Tejon Ranchcorp to justify 50-year "take" permits for each of 27 species, including the endangered California Condor.

The question that emerges from this first level review relates to FWS responsibility under its National Environmental Protection Act guidelines: Is it lawful for FWS to move into the next section of the permitting process if this preliminary public comment phase is fundamentally flawed?

Sampling of Discrepancies

In sections of the discrepancy notes presented here, we include some of Stafford's vetting statements from March 30 review.

O10-11

I. DISCREPANCIES BETWEEN MAPS AND TEXT IN HCP

1) **The California Condor Conservation and Management Plan ("Condor Plan"):** On pg. 36,

reference is made to the "TMV Specific Plan" being a "7,800 ac. area" in which development would occur within the "Planning Area boundary." On pg. 22, the "TMV Planning Area' is stated to be "26,417 ac." On pg. 4, the phrase "proposed development" is stated as being 7,900 ac. "associated with TMV."

Stafford: They state the TMV planning area as 26,000 acres and then they state the opposite of what the maps show insofar as the acreages. The text indicates that the TMV planning area is more than three times larger than the TMV specific plan whereas the maps show the reverse. Yellow on map 4-9 (referred to on 4-9 as "proposed development") is the same as orange on map 4-6 referred to as "TMV Planning area." There is much more proposed development shown on Map 4-9 than just TMV.

On page 22, it says the TMV planning area encompasses 26,000 acres. That is not matching. Unfortunately, the maps don't show acreage, so we can only make relative comparisons.

Everything that Katy has written above here is true. I have not found anything that does not check.

O10-11 (Cont.)

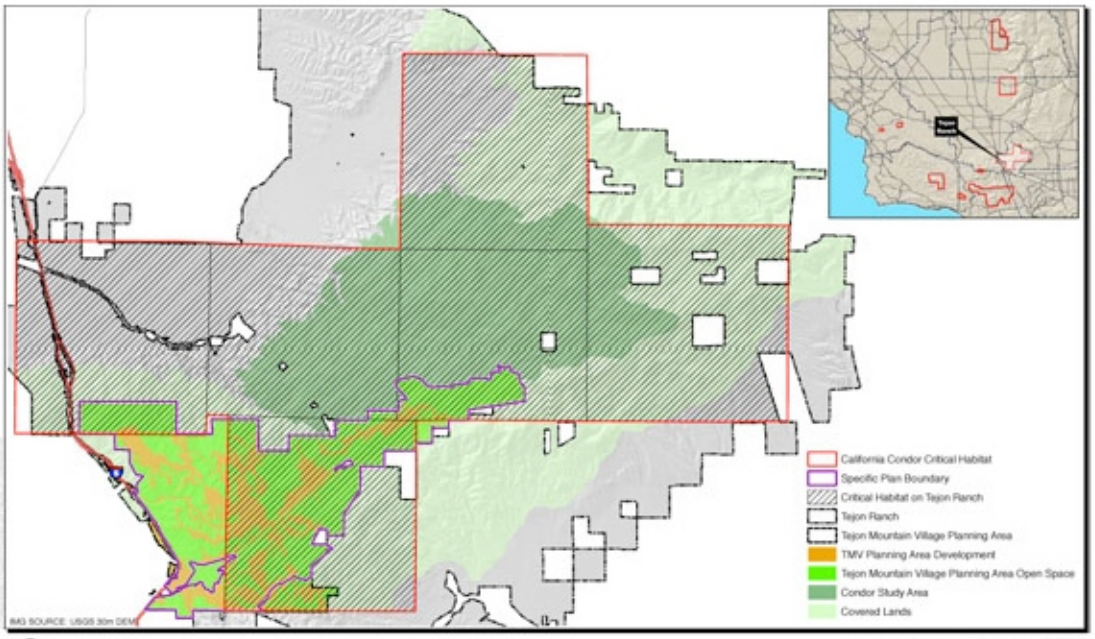
2) **However, in Fig. 4-6, the area labeled "TMV Planning Area" (26,417 ac.) is much smaller and wholly contained within the "Specific Plan boundary" (7,800/7,900 ac.).** Fig. 4-9 shows a "proposed development" (which is the same shape and location as Fig. 4-6's "TMV Planning Area") also as wholly within the "TMV Specific Plan Boundary."

O10-12

3) **In other words, Pgs. 4, 22 and 36 state the opposite of what the maps show.** And at least one map uses a different naming convention to label the actual TMV development.

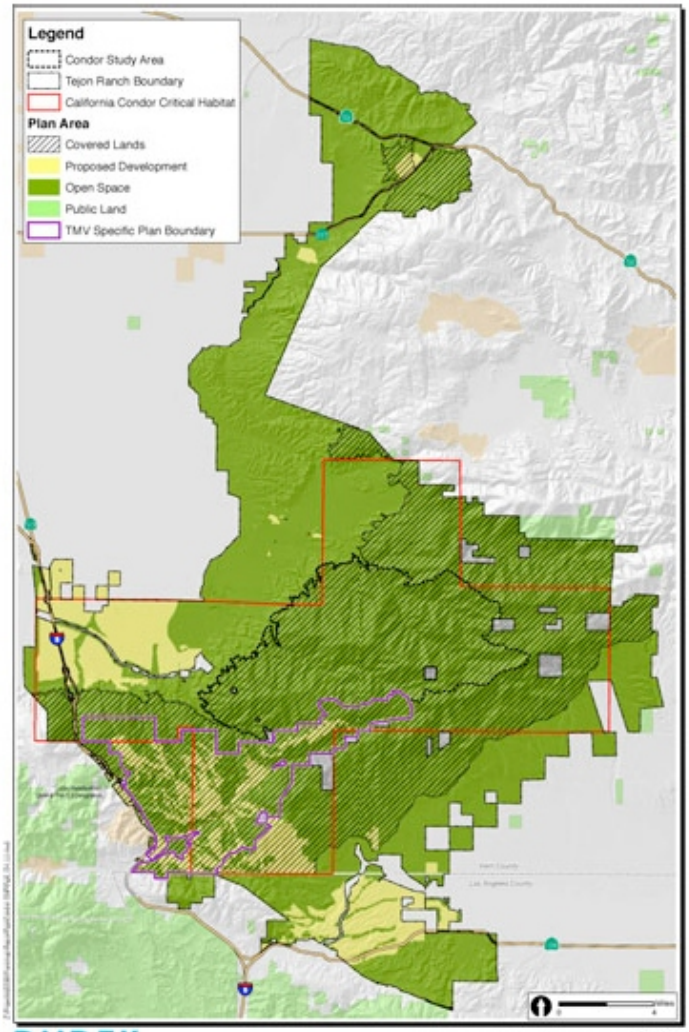
Stafford: This summarizes everything found factually above.

O10-13



DUDEK

DRAFT TEHACHAPI UPLAND MSHCP
Critical Condor Habitat within Tejon Ranch
FIGURE 4-6

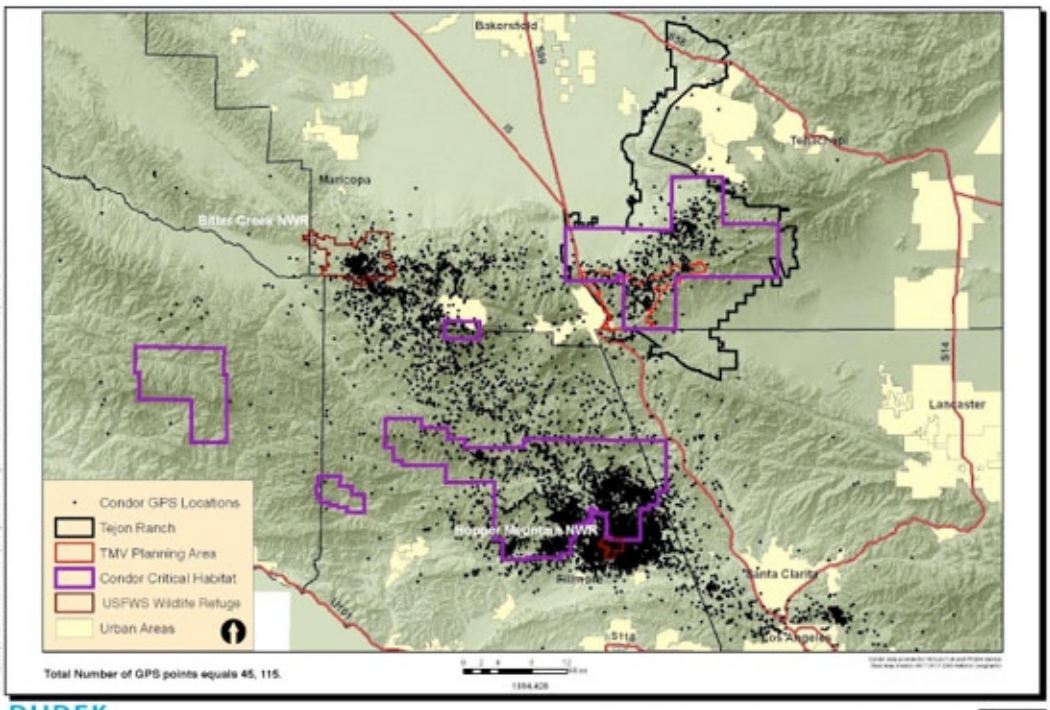


O10-13 (Cont.)

4) **Additionally, Fig. 4-10** [below] shows that a majority of the "TMV PLANNING AREA" falls within designated "Condor Critical Habitat" (CCH).

Stafford: According to the map, that is accurate..... In Figure 4-10 Condor Critical Habitat shows that the TMV Planning area (IN RED) is what on Fig. 4-9 is called the TMV SPECIFIC PLAN and on Fig 4-9, they do not show TMV Development area as an isolated labelled area. Color convention is not consistent between the maps.

O10-14



DUDEK

DRAFT TEHACHAPI UPLAND MSHCP FIGURE 4-10

California Condor GPS Locations (Aerial, Perch & Roost) and Condor Critical Habitat in Southern California, April 2002- June 19, 2008

O10-14 (Cont.)

5) **Within the HCP "Definitions" section, Condor Critical Habitat is not defined in the documents we reviewed.** According to pagination, there are no pages missing. Nonetheless, the term "Condor Critical Habitat" is used in both the maps and the text of the HCP.

Stafford: Figures 4-9 and 4-6 show that the majority of the TMV proposed development area is shown to be within areas which are labelled as Condor Critical Habitat.

O10-15

II. DISCREPANCIES BETWEEN MAPS AND TEXT IN THE DEIS, which is (under the National Environmental Protection Act) to be the U.S. Fish and Wildlife Service analysis of the HCP: But in the DEIS there is no reference to Condor Critical Habitat at all (despite the fact that the term is a FWS designation). The DEIS uses only the term "Condor Study Area" which is "apples and oranges," in that it is a much smaller area than Condor Critical Habitat. Therefore, comparing the maps and text presentation of the DEIS with the HCP in this vital subject regarding condor range is not possible.

O10-16

1) In a first look at the Draft Environmental Impact Statement (DEIS) to assess its four proposed alternatives and to see how thoroughly it analyzes the Tehachapi Multispecies Upland Habitat Conservation Plan (HCP), comparisons between the maps of the DEIS and HCP are necessary. However, this has been rendered impossible as 61 out of 65 DEIS maps depict only the 37,099-acre Condor Study Area (CSA) whereas the HCP (pg. 3 of Appendix C, the "Tejon Ranch California Condor Conservation and Management Plan") refers to the much larger 131,947 acres of Condor Critical Habitat (CCH) that fall within the boundary of Tejon Ranch.

[NOTE: The DEIS uses a figure of 132,043 acres [DEIS pg. 3.1-10], and the HCP uses yet another figure of 132,009 acres (pg. 4 of Appendix C, the "Tejon Ranch California Condor Conservation and Management Plan"). Further, there is a discrepancy between the DEIS and HCP for the total condor critical habitat acreage distributed throughout California as designated by the US Fish & Wildlife Service: HCP says that acreage is 605,190 (pg. 3 of Appendix C) and the DEIS says 570,400 acres

O10-17

(pg. 3.1-10).]

O10-17 (Cont.)

2) The distinction between CSA and CCH is important because according to the DEIS maps, the planned Tejon Mountain Village (TMV) development and other land uses such as mining and other commercial and industrial development lie wholly *outside* the CSA, potentially giving the impression that there will be minimal, if any, impact on at least one critically endangered species, the California Condor. However, the proposed TMV development, the Industrial Site Complex and some of the above-mentioned land uses—while outside the CSA—do not lie outside of the CCH. In fact, according to the HCP maps, most of the proposed land development, except Centennial, falls well *within* the CCH (critical condor habitat) boundary.

O10-18

3) Of the four maps in the DEIS where condor critical habitat is shown, only two show the spatial relation to Tejon Mountain Village planned development (Figs. 4.1-1 and 4.1-2).

O10-19

3a) However, Fig. 4.1-1 repeats the same error that occurs in the HCP by reversing the names of the "Specific Plan Boundary" and "TMV Planning Area Development." (Other DEIS maps that repeat this naming error are Figs. 2.7 and Fig. 2-8 [sic].)

O10-20

4) Fig. 4.1-2 uses one color for all "Development" without identifying the individual development lands (TMV, Centennial, National Cement, Industrial Site Complex, etc.). For those of the public who may already know the shapes of these current and proposed development footprints, this map corroborates that most of the TMV and Industrial Site Complex developments fall within Condor Critical Habitat.

O10-21

5) Because these DEIS maps do not show CCH but only the smaller CSA, it is difficult to see how the public can assess how large an encroachment all the proposed developments, land uses and utility easements will have on Condor Critical Habitat, thus calling into question the effectiveness of commenting on which of the four "proposed alternatives" might have the least impact.

O10-22

6) Further, "Condor critical habitat" is not referred to anywhere in the 528 pages of text of the DEIS except for one historical note regarding the 1992 release of the first two condors into "critical condor habitat" in the Sespe-Piru California area (DEIS, pg. 3.1-11). **Thus, there is no discussion of the cumulative effects all the proposed development and land uses will have on at least this one endangered species' critical habitat regardless of which alternative is chosen.**

O10-23

7) The maps themselves are extremely difficult to read even at their 11" x 17" size. The multiplicity of similar colors used in the legends and on the maps to differentiate miniscule parcels of land only further complicates analysis of the four alternatives (e.g., Figs. 2.9, 2.10, 2.11). **There are also errors in the legends where colors are used that don't occur on the map (e.g., Fig. 3.7-4), or where one color is specified in the legend but a different color is used on the map** (e.g., Fig. 2-1). One map is unreadable, obviously reproduced from a low-resolution image (Fig. 4-11 in the HCP).

O10-24

III. INCONSISTENCIES REGARDING SIZE OF PROPOSED DEVELOPMENT

1) In the **DEIS, pgs. 2-11 thru 2-12 (Sec. 2.3.3.1.3** "Commercial and Residential Development Activities") break down the acreages and footprints of the proposed developments.

In the first subsection called *Tejon Mountain Village Planning Area*, it says, "The TMV Planning Area is composed of three primary components: the TMV Specific Plan Area, a small area west of I-5, and the Oso Canyon area."

O10-25

1a) The "TMV Specific Plan Area" is, according to the DEIS, "26,417 acres of the 28,253-acre TMV Planning Area," **which contradicts what the HCP says.**

1b) As discussed above, the HCP says that the "Specific Plan Area" is 7,800/7,900 acres [a conflict within the HCP text itself] and the "Planning Area" is 26,417 acres. But here again, the internal HCP maps further contradict the HCP text, labeling these two areas the opposite, showing the "Specific Plan Area" to be bigger [26,417 acres] than the "Planning Area" [7,800/7,900 acres] within which it ostensibly resides.)

O10-25 (Cont.)

2) Back to the DEIS: It says that the "*TMV project* would include up to 3,450 residences, up to 160,000 s.f. of commercial development, two golf courses, an equestrian center, up to 750 hotel rooms, and up to 350,000 s.f. of support uses..." (italics mine to indicate that 'TMV Project' is being used as a catch-all term that combines "Specific Plan" and "Planning Area" components)

O10-26

2a) On the DEIS map (Fig. 2-10), this "small area west of I-5" shows three different patches of the same color, which the map's legend identifies only as "accepted county plan area." The total is 153 acres which will support "approximately **173 dwelling units** and **304,920 s.f. of commercial space.**" (These three patches are not contiguous, the first of which appears due west of Castac Lake and the next two farther north, which appears to be due west of the school and the Tejon Ranchcorp headquarters—all three areas of which are "west of I-5.") The DEIS also states "*no development plans currently exist* for this portion of the TMV Planning Area west of I-5." (italics mine)

O10-27

2b) The next subsection called *Lebec/Existing Headquarters* says, "TRC has *no current development plans* for this area. Development of up to nine dwelling units and 1,339,470 s.f. of commercial development would be consistent with the Kern County General Plan..." (italics again mine. ALSO NOTE: There is a tiny pink area on the map that, I believe, is where the headquarters is located although it isn't labeled as such, only that "specific plan required" presumably should development plans materialize.)

O10-28

2c) The whole section concludes with "**a total of 3,633 dwelling units and 1,804,390 s.f. of commercial space is assumed...**" **and "would result in a disturbance area of approximately 5,533 acres, or 4% of the Covered Lands."**

Stafford: it sounds like a controversy comes from what the actual acreage of the development is. Are they counting as "open space" all the acreage that they area selling to homeowners? They come up with a ridiculously small "disturbance area"—5,533 acres of being disturbed or 4%.

O10-29

2d) 3,450 "residences" + 173 residences west of I-5 + up to 9 "dwelling units" = 3,632 units, not 3,633 (math error by professional consultant). *Stafford: Apparently these are areas already shown within the Kern County General Plan;* it says Tejon Ranch has no current development plans for this area. 1,339,470 sq ft. of commercial development would be consistent with the Kern County general plan (*Stafford:That is over 100 acres*)

O10-30

3) 160,000 s.f. commercial + 304,920 s.f. commercial = 464,920 s.f. commercial, not 1,804,390 s.f.. How did the DEIS arrive at this figure? By adding the 1,339,470 s.f. commercial space in Lebec/TRC Headquarter area that TRC states "has no current development plans." They included a figure for which no current development plans are in place **but have not added the 350,000 s.f. (30 acres) of "support use" that is required** for the current commercial hotel/resort's support activity? How is this hotel support space not commercial? Is it misleading to call more than a third of a million square feet of a commercial hotel's footprint as "support use"?

O10-31

Stafford: I have two related questions: Is this acreage accurate? Katy Penland asks if they include the hotels and golf courses within that. Second: What is the definition of "disturbance area?" Some of these are 20 to 80 acre parcels. But does "disturbance area" include discussion and consideration of urban-wildland interface disturbance analysis? "Disturbance" of habitat increases with the amount of interface—many separate chunks with different uses creates much greater interface disturbance. There is a significant difference in the habitat value of uninterrupted acreage and "greenbelt" acreage. They are not equivalent when it comes to the ability of wildlife to use the areas. In addition, if there are homes here, there will be collateral disturbance, such as fuel reduction to protect homes from fires, the tendency of wild animals to stay away from human habitation, the impact of the homeowners' domestic animals, including dogs and cats, foraging in the areas, and the tendency of wild animals to "get in trouble" when they find a food source close to homes due to homeowners activity and the owner then calls for control measures by federal and state agencies (to remove and often kill wildlife that has strayed into the area). This should all be taken into consideration if we are to be accurate in our discussion of "disturbed area." We need to examine the breadth and depth of the [cumulative interface acres] in order to speak about "disturbed area" accurately.

O10-31 (Cont.)

Conclusion and Question:

The above sampling of notes reflect only a superficial preliminary overview of the sections of these documents specific to the California Condor, neglecting inquiry at this time into 26 other species. Our goal in publishing this sampling of notes is to bring to the attention of all parties—the public, the United States Fish and Wildlife Service, our state, local and national government representatives and the developer—to this question: When the agencies involved have released significantly flawed documents to the public with a ticking clock within which the documents are to be examined and commented upon, what does the notion of "public comment" and a "public comment period" really mean?

O10-32

Printed From The Mountain Enterprise

2009-04-17

PART 2: Habitat Plan and Federal Analysis Show Major Flaws

Last week, April 10, 2009, we published a report explaining to our readers that after 100 hours of examination, we were disappointed to report that there are such serious errors and internal contradictions in the way two of the most important documents for the future of this region have been presented by the developer and the U.S. government, that it calls into question the legality of the public comment period itself.

We asked if the clock should stop ticking and the documents be withdrawn for correction before they should be considered valid for the purpose of public comment.

We placed the reports and sample discrepancies online so Tejon Ranch and the U.S. Fish and Wildlife Service could review them clearly and reply. These are the replies we received.

O10-33

.....

Lois Grunwald
Public Affairs Officer U.S. Fish and Wildlife Service

"These are comprehensive draft documents. They are weighty and comprehensive because we want our process to be as transparent as possible, and, as such, for the public to see what the draft documents say and how we've done our analysis.

"Public participation is important. We encourage anyone with an interest to read the draft conservation plan and DEIS and provide us with their comments.

O10-34

"After the comment period closes, we will address all specific comments on the documents in preparation of our decision on whether or not to issue the permit." O10-34 (Cont.)

.....

Barry Zoeller,
Vice President of Corporate Communication for Tejon Ranch Company

We appreciate *The Mountain Enterprise* participating in the first of several public comment periods as part of the U.S. Fish and Wildlife Service's (FWS) extensive review of the proposed Tehachapi Uplands Multi-Species Habitat Conservation Plan. Working closely with the FWS, we drafted this Habitat Conservation Plan (HCP) to provide a comprehensive set of protective conservation measures for 27 different plant and animal species—including the California Condor. Many of the lesser-known species covered by the plan have no state or federal protection at all. HCPs are authorized by Congress under the Endangered Species Act. This HCP will provide an unprecedented level of protection for species and their habitats while Tejon Ranch carries out its vision of extensive conservation, continued ranching and farming, and the highquality environmentally sensitive development of a small portion of its land. If approved, it will join nearly 800 HCPs nationwide currently protecting nearly 600 different species and millions of acres of habitat.

We respectfully disagree with *The Mountain Enterprise's* contention that there are "major flaws" with the documents. The documents are comprehensive, perhaps complex to some, and describe in great detail both the efforts of Tejon Ranch to protect and conserve natural resources within the 142,000 acres covered by the plan—and the FWS's evaluation of the HCP's effectiveness. We encourage people to participate in the public comment period and point out any issues or questions they may have to the FWS. Once this public comment period ends on May 5th, the FWS will respond to all the comments received and will subsequently publish a revised version of the documents and the public will again have the opportunity to comment on them prior to any final decision. O10-35

The Mountain Enterprise also thought it important to question the credentials of Mr. Pete Bloom, the primary author of the Condor Plan, erroneously saying he's not a condor specialist. In fact, Mr. Bloom is a highly-regarded condor expert who worked on the Condor Recovery Program for many years and, in cooperation with the FWS, personally trapped and tagged all of the original wild free-flying California Condors prior to the captive breeding program. Working with the National Audubon Society, he conducted extensive ethological field observations, including on Tejon Ranch, for the California condor recovery program. Mr. Bloom's plan was then reviewed and supplemented by two additional condor experts: Dr. Robert Risebrough, a current member of the California Condor Recovery Team and an acknowledged expert on mortality and diseases of condors; and Mr. Lloyd Kiff, who, as past Chairman of the California Condor Recovery Team, wrote the California Condor Recovery Plan in 1996. With the assistance of scores of experts in their field, including the FWS, Tejon Ranch has developed a plan that will effectively integrate its land use plans with a comprehensive series of measures to protect and conserve species and their habitats.

***The Mountain Enterprise* Opinion:**
We appreciate that both Tejon Ranch and the U.S. Fish and Wildlife Service (FWS) shared their replies. We were surprised to see that both go to some effort to dodge the real question raised by *The Mountain Enterprise:* O10-36

It is not the length of the documents that is of concern, it is their sloppiness. O10-37

Contradictions between maps and text, maps and maps, text and text and DEIS to HCP are of such frequency and severity that they create a barricade of errors between the reader and meaningful consideration of the important science that should be the focus of such work.

O10-38

It is a fiction to claim our report was about "complexity." It is about self-contradiction within the documents themselves which create material obstruction to public comment. The result, we report with disappointment, creates a parody of what both writers here call "the public comment period."

O10-39

Our goal in publishing this sampling of notes is to bring to the attention of all parties—the public, the United States Fish and Wildlife Service, our state, local and national government representatives and the developer—to this question:

O10-40

When the agencies involved have released significantly flawed documents to the public with a ticking clock within which the documents are to be examined and commented upon, what does the notion of "public comment" and a "public comment period" really mean?

O10-41

Last, *The Mountain Enterprise* is not a participant in the public comment process for the HCP. We are journalists reporting to the public about the public comment process and the documents presented by the government and the developer. We asked FWS questions for the April 10 report. If FWS or Tejon Ranch attempt to characterize our reports or correspondence as HCP/DEIS "public comment," then they are misrepresenting our dialogue with them.

O10-42

There is a legal reason to make this careful distinction. Under the procedural rules, it appears that principals are not required to answer questions during the comment period regarding "public comments." On the other hand, it is clear that both FWS and Tejon Ranch Company are proud of their work product and its comprehensive nature. We anticipate they will be motivated to help us report about the content so the importance of these issues and options can be more widely understood by the public.

See a preliminary sample of the kind of discrepancies and inconsistencies that are of concern at www.MountainEnterprise.com including contradictory map images.

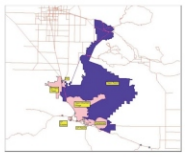
O10-43

T R I C O U N T Y
W A T C H D O G S

Watchdog

TriCounty Watchdogs is an environmental organization in the Mountain Communities. Its mission is to protect our natural and cultural resources, and promote ecotourism and responsible growth.

Occasional Newsletter **Issue 01 -- February 2009**



Who we are

TriCounty Watchdogs (TCW) was established in 2003 by people from the Mountain Communities, the area around Frazier Park, Gorman, Lake of the Woods, Lebec, Lockwood Valley, Pinon Pines, and Pine Mountain Club. We live in the valleys created by the San Andreas Fault, in the stretch that runs from Cuyama to the Big Bend, where it meets the Garlock Fault. Our area lies in three counties. Most of us are in Kern, Gorman is in Los Angeles, and Lockwood is in Ventura. None of our communities are incorporated. We do not get water from the state, we depend on the runoff of the surrounding mountains that collects in our aquifers.

Of our area, 270,000 acres are taken up by Tejon Ranch, and 100,000 acres by Windwolves Preserve. Almost all the rest is Los Padres National Forest. Right in the middle is Mount Pinos, almost 9,000 feet high, the center of the universe for the Chumash. Our frontier to the North are the Tehachapi and San Emigdio Mountains, more products of the San Andreas. We live at altitudes of 4,000 to 7,000 feet.

There are not many jobs in our area. The few that there are either connected with ecotourism or with its opposite, polluting mineral exploration. TCW was founded because of concerns for our environment and economy. We wanted to preserve, as much as possible, our mountain way of living. There are plans to build up to 50,000 homes in our area, to transform us into the next Santa Clarita or Bakersfield. This is not what we want, it is not why we moved here , and it will destroy what we have. We worry about our resources, our services, and our economic development. If they are threatened, we will put up a fight.

O10-44

Tehachapi Uplands Multispecies Habitat Conservation Plan

The documents—a draft Environmental Impact Statement (EIS) under the National Environmental Policy Act and a draft Tehachapi Uplands Multi-Species Habitat Conservation Plan (MSHCP)—are available for public review and comment until May 5, 2009.

The draft Multi-Species Habitat Conservation Plan (MSHCP), authored by Tejon Ranch Company with input from the Service, describes measures to be taken by Tejon Ranch to minimize and mitigate effects of its actions on native plants and wildlife, including California condors.

The draft EIS analyzes the environmental impacts of issuing the 50-year incidental take permit to Tejon Ranch Company for on-going ranch activities and a planned community development.

An incidental take permit authorizes the incidental take of a listed species, and does not authorize the activities that result in take. Take is defined in the Endangered Species Act as harass, harm, pursue, wound, kill, hunt, capture, shoot, trap or collect a threatened or endangered species, or attempt to do any of these activities. No condors would be permitted to be killed under a permit issued by the Service.

The draft MSHCP describes measures which would minimize and mitigate effects of its activities on 27 native plants, animals, and their habitats on 141,886 acres of Tejon Ranch, including a 5,533-acre development adjacent to the Interstate 5 corridor and Lebec community in Kern County. The incidental take permit would also cover ongoing historic uses of the property, such as grazing and film production. The permit would not cover take caused by hunting or mineral extraction.

Concerned citizens will scrutinize the documents carefully with an eye to compliance with the Endangered Species Act. Attendance at the sponsored CEQA/NEPA workshop sponsored by the Watchdogs is highly recommended to aid in persons wishing to understand what is covered and not covered in these two documents

The documents themselves are available on line and can be viewed and downloaded at the Ventura Fish and Wildlife Office's web site at: http://www.fws.gov/ventura. For further information you can contact Steve Kirkland at 805, 644.1766 ex 267

Basic information for this article taken from release from Fish and Wildlife Service.

Checking Up on Condors

(1) How many condors living in the wild ?
(2) What word describes the Condor? Monogamous or Polygamous?
(3) What do Condors eat?
(4) How long can Condors expect to live?
(5) How many eggs does a Condor lay?
(6) How far can Condors fly in one day?
(7) What do Condors eat?
(8) How do Condors find their food?
(9) How are Tejon Ranch and Condors connected?
(10) What was biggest cause of death of condors before 2009?
(11) Now what is biggest threat to Condors?
(12) What was the biggest Condor event of 2008?

O10-44 (Cont.)

TriCounty Watchdogs receive $5,000 grant

Members of the TriCounty Watchdogs are pleased to announce that their organization has been awarded a $5,000 grant from the Community Action Fund of The Women's Foundation of California.

The TriCounty Watchdogs was founded in 2003 by men and women from Frazier Mountain communities located in Kern, Ventura and LA counties. Spurred by increasing air and water pollution from existing and proposed residential and industrial development, these activist citizens have embraced a twofold mission: to protect the area's natural and cultural resources and to promote ecotourism and responsible growth.

Through monitoring and commenting on public documents, the Watchdogs and their members have helped stop, delay or modify several environmentally damaging projects. Most recently members of the Watchdogs supported the Mountain Communities Town Council's successful effort to get the San Joaquin Valley Air Pollution Control District to place an air monitor in Lebec. This monitor is crucial to determining how much particulate matter is settling into our children's lungs while they play in schoolyards not far from heavy traffic on the I-5.

In addition to educating public officials and judges, the Watchdogs have sponsored several educational forums. They are committed to empowering more community members to present their views publicly and to mount their own campaigns to protect and enhance local water supplies, air quality, historical heritage, and economic opportunities. The project funded by The Women's Foundation is an example of this commitment.

The funded project is Mountain Women Speak Out. The goal of this project is to:

- ☑ Develop a cadre of women and girls trained to encourage (or challenge) local environmental concerns that threaten local communities, specifically to speak out following participation in California Environmental Quality Act (CEQA) public comment sessions;
- ☑ Increase the number of women and girls in the community who shape our future by taking active roles in community affairs; and
- ☑ Reach out to low-income and Latino women and girls to persuade them that they have a voice and it is worth hearing.

How will focusing on women help the Watchdogs' environmental goals? As Linda MacKay, a founding member of the Watchdogs and current president, puts it, "Women can be very important in a grassroots movement. Women are often the ones who sustain a movement. The Watchdogs recognize how valuable it is to give those in our community, who may not have had the exposure previously, tools so they can participate with confidence in what is happening in our communities."

O10-44 (Cont.)

CEQA

The California Environmental Quality Act

Sign up for the FREE WORKSHOP on the

California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA)

the two key pieces of legislation governing land use decisions.

Local examples: Centennial, Frazier Estates, Gorman Ranch, Tejon Mountain Village and more

Caroline Farrell and Jennifer Giddings, two experienced lawyers with the Center on Race, Poverty and the Environment, will be the presenters. They will outline the basics of the law and identify the important interpretations of the law made by the courts over the past years since its passage in 1970.

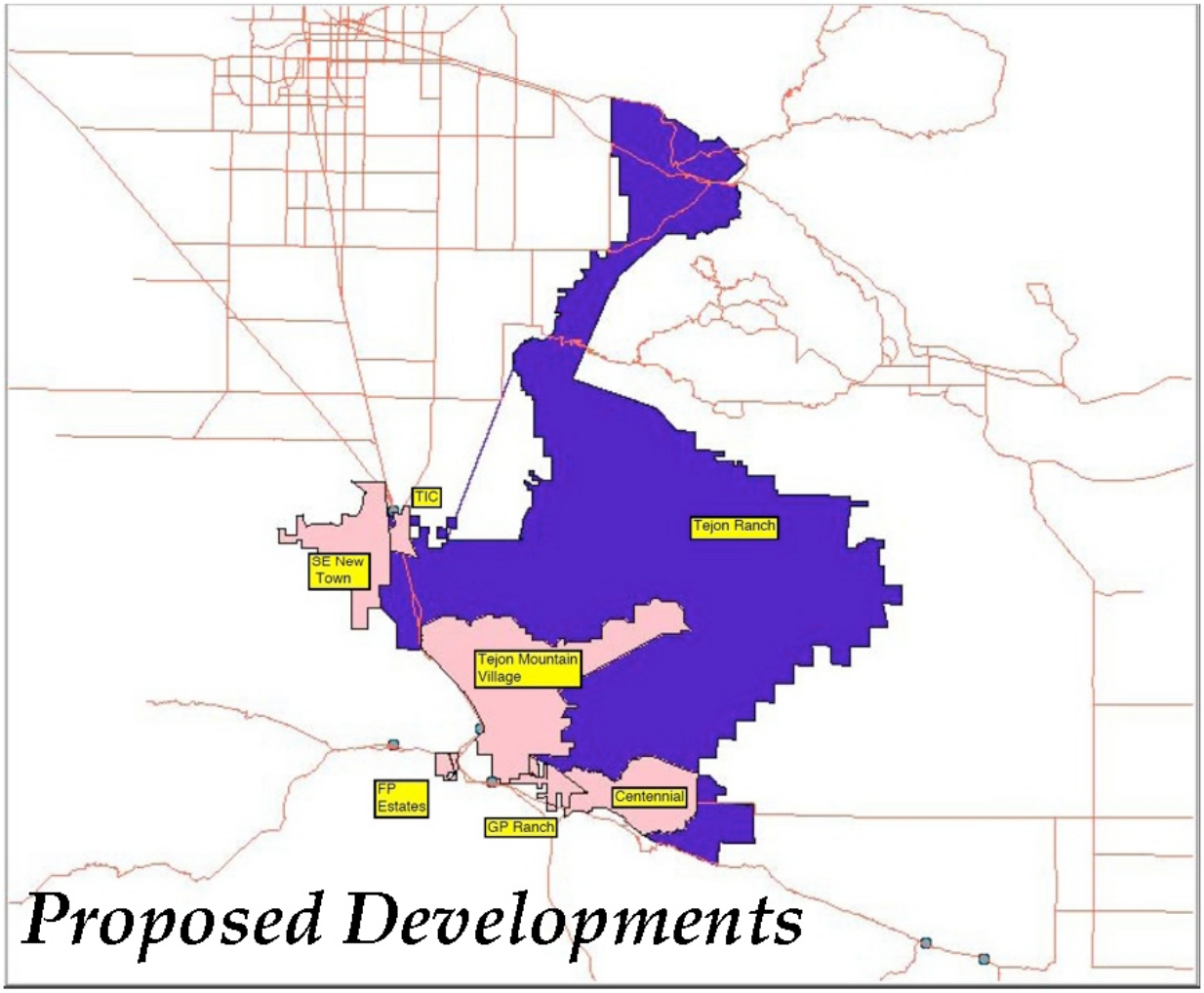
This workshop is without cost to all who wish to take advantage of this opportunity.

It will be held at
3015 Mt. Pinos Way, Sunday afternoon, February 22nd 1:30 PM to 4:30 PM.

(This building includes our local public library and
the Healthy Start Family Resource Center)

Refreshments will be served
Sign Up Now As Space Is Limited
Mary Ann Lockhart - jmal@frazmtn.com - (661) 242-0432
Linda MacKay -- in_tules@yahoo.com - (661) 747-3062

O10-44
(Cont.)



O10-44 (Cont.)

Frazier Park Estates

A proposal to build 705 homes (with lot sizes of 6,500 sq feet to over 40,000 sq feet) on 323 acres in LA County and 847 acres in Kern County. Includes 135K sq feet of commercial space, a new Community Services District, and wastewater and water facilities.

Expect recirculation of the DEIR before the end of February. A previous version was withdrawn through community action.

Tejon Mountain Village

The plan is to build about 3,500 houses and 160,000 total square feet of non-residential development on almost 30,000 acres (of which 23,000 will be a "nature preserve"). This is the development that threatens the condor and 27 other endangered species.

Expect circulation of the DEIR sometime in May or June.

Gorman Post Ranch

The plan is to build 531 houses on 400 acres, with a total project area of about 2500 acres. This project includes part of the triangle between Gorman Post Road, I-5, and SR 138 and the hillsites east of Gorman Post Road, south of the SC Edison Power Station.

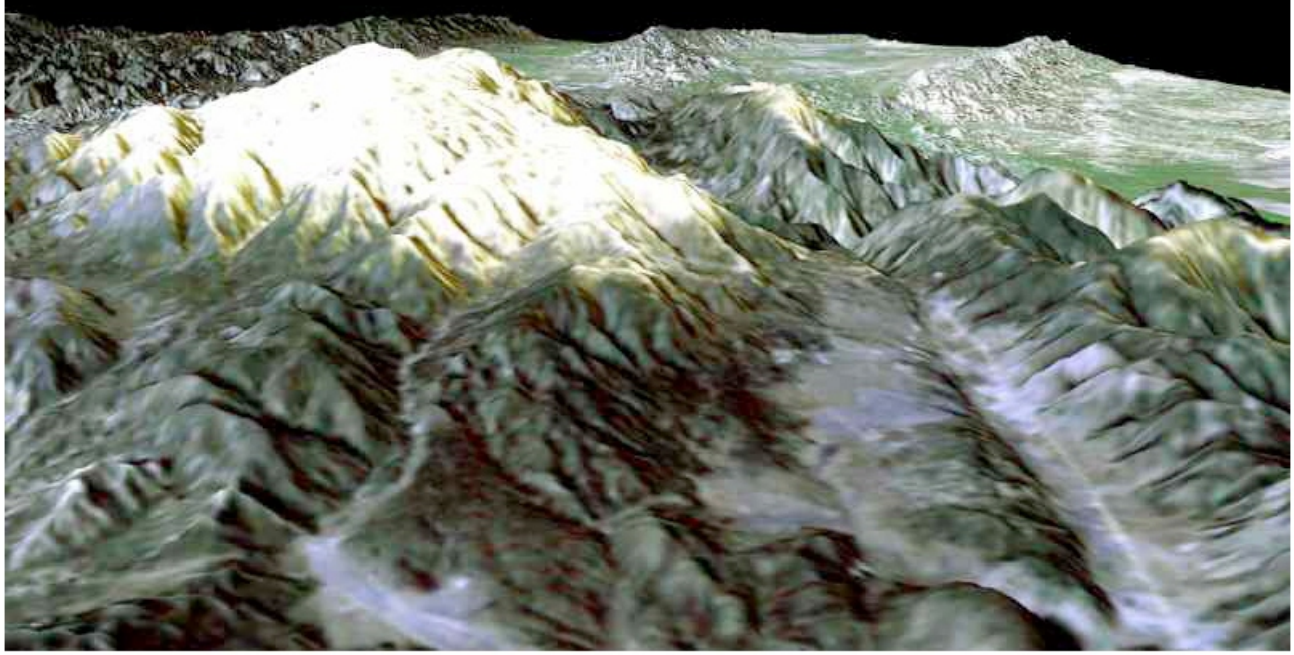
There has been no action on this project in the last two years. The land is leased for grazing for 5 years.

Centennial

The plan is to build about 23,000 houses and 14 million square feet of non-residential development on 12,000 acres, over a period of 20 years. 70,000 people will be surrounded by fire hazards, on top of three active faults, without enough water, and with just two long and precarious lifelines connecting them to the rest of the world.

Expect circulation of the DEIR sometime in May or June.

Native Americans



We really do not know very much about the Native Americans that lived in our area before 1850. Most of the information comes from the Spanish priests and soldiers traveling through the area, but their diary entries are sparse and they only covered a small part of the region. We know there was the Ventureño Chumash village *Mat'apxwelxwel* at the mouth of Grapevine Canyon, and the village *Tashlipun* at the mouth of San Emigdio Canyon. Near *Tashlipun* was the Battle of San Emigdio in 1824, between Chumash refugees from the Santa Barbara Mission and Mexican soldiers under Carlos Carrillo. The Kitanemuk lived in the *Kashtiq* village on what is now Castac Lake. Around Quail Lake and Liebre Mountain lived the mysterious Tataviam or Alliklik. North of San Emigdio, at Buena Vista Lake, was the beginning of the Yokuts territory.

There is a more information when the United States became involved. In 1851 Indian Commissioner George Barbour made a treaty with the ''*Texon*, *Castake*, *San Imerio*, *Uvas*" tribes in which the US promised ''to set apart and forever hold for the sole use and occupancy of the said tribes" about 500,000 acres of land, stretching from Cuyama to the Sierra's and from Cuddy Valley to Bakersfield. In 1853 Indian Superintendant Edward Fitzgerald Beale established the Sebastian Indian Reservation, on 20,000 acres near the mouth of Tejon Canyon, and started moving the local tribes to seven Indian rancherias on the reservation. Fort Tejon was established at the same time, to ''protect the indians", but really to keep them in line. This did not last long. The size of the reservation was reduced to 10,000 acres, then to 5,000 acres, and most of the about 1,000 Native Americans left or were moved to the Tule Reservation. In 1864 the reservation was closed and Beale incorporated it, together with the Fort, in his newly formed Tejon Ranch. You can find more information on the Nimby blog.

O10-44 (Cont.)

We all know what happened to the California Indians during and after the Gold Rush. They were hunted and killed. Their land was taken away, and they had no rights under the law. They were chased from Tejon Ranch, both by Beale and by the Chandler's, with the help of the State and the courts. Even now, the Tejoneños are denied access to their native lands, which are being made ready to support multi-million dollar homes.

Quite a bit has been written about the importance of our area for the Chumash religion and cosmology. If you are interested, Jan de Leeuw's library has reprints of many articles and dissertations, and many books dealing with history, ethnography, language and culture of our local tribes.

Both Mount Pinos (*Iwhinmu'u*) and Frazier Mountain (*Tosholoolo*) were sacred for the Chumash. Between them was Cuddy Valley, the sacred *'antap*, with the lagunita (pond) that may have been the entrance to the center of the earth. These were power places, dangerous to visit unless one was well-prepared spiritually. Spirits lived on our mountains. They made the earthquakes in *'Itiashup*, the Middle World, and the Chumash who ventured up the mountain heard the sounds of bullroarers, barking dogs, flutes, and whistles. There is evidence that *Iwhinmu'u* was thought of as the center of the three flat circular worlds that made up the Chumash' cosmos.

There were feathered poles on Pinos, indicating the location of important shrines. This is where *Kakunupmawa*, the Winter Solstice Ceremony, took place, to pull the Sun back to the Earth. In the meantime the powerful beings living in *'Alapay*, the Upper World, were playing peon every night. If *Shnilemun*, Coyote of the Sky, wins he gets the Sun's harvest of acorns, deer, and geese which he passes on to the Chumash in *'Itiashup*. If the Sun wins, he receives human lives as pay.

O10-44 (Cont.)

As you see, there were people and there was a culture in our area long before the settlers of 1860, the miners of 1900, and the resort communities of 1930. There are ancient rights that were ignored, innumerable promises that were broken, and horrible crimes that were committed. We should not go about °Preserving California's Legacy' ' by paving over or flooding sacred places.

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If you want to know more ...

Click your way to much additional information. All the web links in the section are "live". If you are on a computer reading this newsletter in a browser or a PDF reader, then clicking the links will open the pages in your browser.

☑ You can always find the latest version of this newsletter, and back issues, at http://www.cuddyvalley.org/dogsnews

☑ You can subscribe to our mailing list, and receive news and announcements, at http://www.cuddyvalley.org/mailman/listinfo/tcwdogs/

☑ You can find the TCWDogs webpage at http://www.cuddyvalley.org/tcwdogs. It has complete information about the major development projects in our area.

☑ More background information on past projects in the past, and on smaller local projects, is at http://www.cuddyvalley.org/projects

☑ Information on the history of the Mountain Communities is at the web site of the Ridge Route Museum, at the Cuddy Valley website, and at the Nimby blog.

☑ Background information on the California Environmental Quality Act (CEQA) and the many topics that it covers

O10-44 (Cont.)

Answers to Checking on Condors

(1) 160 condors.
(2) Monogamous.
(3) Dead meat.
(4) 60 plus years.
(5) On average, one every two years.
(6) 140 miles or so.
(7) Carrion, dead meat.
(8) Look for other animals eating dead food.
(9) Much of Tejon Ranch lands are historical foraging places for the Condors.
(10) Using lead bullets for hunting. Now against the law in specific feeding areas.
(11) Microtrash, all those little bits of glass, tin foil, and the like. Condor Moms feed these bits and pieces to their young. Deadly.
(12) 7 young condors successfully hatched in this year and are living in the wild.

TCW Core

Linda MacKay — President
Jan de Leeuw — Secretary
Keats Gefter — Treasurer

Ileene Anderson, Rose Bryan, Dee Dominguez, Katherine King, Carolee Krieger, Mary Ann Lockhart, Doug Peters, Lynne Plambeck, Mar Preston, Lynn Stafford

Contact Information

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Comment Letter O11

Jan de Leeuw
<deleeuw@frazmtn.com>

06/18/2009 08:57 AM

To: fw8tumshcp@fws.gov
cc:
Subject: TU_HCP_EIS

Dear Mary Grim

In the DEIS for the TUMHCP the consultants refer to the report

Pacific Advanced Civil Engineering, Inc. 2003. Tejon Lake Report for the Tejon Mountain Village Project

This report is not easily available. It seems to me that in order to comment
properly on all aspects of the DEIS/HCP, the public should have access to the
literature the consultants relied on. Could you ask Dudek to send a copy to

TriCounty Watchdogs, Inc.
11667 Steinhoff Rd
Frazier Park
CA 93225

Thank you

Best -- Jan de Leeuw

O11-1

Comment Letter O12

TriCounty Watchdogs

...protecting mountain resources and communities in Kern, Los Angeles, and Ventura Counties.

Craig Murphy, Supervising Planner
Kern County Planning Department
700 "M" Street., Suite 100
Bakersfield, CA 93301-2370

Date 7/13/09

Dear Mr. Murphy,

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RE: Joint Comments on the Tehachapi Upland Multi-Species Habitat Conservation Plan Draft Environmental Impact Statement and the Tejon Mountain Village Draft Environmental Impact Report ("DEIS/DEIR"). You may also receive a version of these comments from other environmental organizations. Note that part of these comments are relevant only for the DEIS for TUMSHCP.

We write to provide comments on both the Tehachapi Upland Multi-Species Habitat Conservation Plan ("MSHCP" or "Plan") Draft Environmental Impact Statement ("DEIS") and the Tejon Mountain Village ("TMV") Draft Environmental Impact Report ("DEIR"): we appreciate this opportunity. After careful review, we find that the DEIS/DEIR fails to comply with the mandates of the California Environmental Quality Act ("CEQA") and the National Environmental Protection Act ("NEPA"). It uses an improper baseline in the No Action/No MSHCP Alternative and does not accurately identify or analyze the significant environmental impacts that would result from black carbon emissions, construction and operations, global warming, or induced growth associated with the proposed Plan and TMV development. The DEIS also fails to provide feasible mitigation measures for air quality and global warming impacts. O12-1

The environmental review process is intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action."[1] It is especially important that the DEIS/DEIR--given the scale of the MSHCP and TMV--provides all the information required by CEQA and NEPA to enable decision makers and the public to understand the significant environmental impacts of the proposal. O12-2

I. The DEIS Fails to Use an Accurate No Action/No MSHCP Alternative. O12-3

[1] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 392 (1988). O12-2A

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The DEIS for the MSHCP is fundamentally flawed because it relies upon build out of "the ranch that would occur consistent with the Kern County General Plan"[2] for its "No Action/No MSHCP Alternative." This masks the environmental impacts that would result from the MSHCP. Environmental review must determine significance in relation to an analysis of the physical conditions in the project area as they exist at the time of the notice of preparation. The MSCHP cannot rely on future conditions (like build out of the General Plan) as a baseline. The DEIS's use of an improper baseline distorts the entire environmental review.

O12-3 (Cont.)

II. The DEIS/DEIR Fails to Consider the Impacts of Black Carbon Emissions.

a. The DEIS/DEIR Must Include an Analysis of Black Carbon Emissions.

The DEIS/DEIR fails to address black carbon, an important short-lived pollutant that significantly contributes to global and regional warming. Black carbon is produced by incomplete combustion: it is the black component of soot. Although combustion produces black and organic carbon, the proportion of black carbon produced by burning fossil fuels, is much greater than that produced by burning biomass.

O12-4

Black carbon is a global warming pollutant for several reasons. 1) It is highly efficient at absorbing solar radiation thus heating the surrounding atmosphere. 2) Atmospheric black carbon absorbs reflected radiation from the surface. 3) When black carbon lands on snow and ice, it reduces the reflectivity of the white surface. This causes increased atmospheric warming and accelerates the rate of snow and ice melt. 4) It evaporates low clouds. Due to black carbon's short atmospheric life span and high global warming potential, decreasing black carbon emissions offers an opportunity to mitigate the effects of global warming trends in the short term.[3]

O12-5

Black carbon is considered a "short-lived pollutant" because it remains in the atmosphere for only about a week in contrast to carbon dioxide, which remains in the atmosphere for over 100 years. Furthermore, the global warming potential of

O12-6

[2] DEIS 3.2.2

O12-3A

[3] Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, Nature Geoscience 1:221-227 (2008).

O12-5A

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black carbon is approximately 760 times greater than that of carbon dioxide over 100 years and approximately 2200 times greater over 20 years.[4] It is estimated that black carbon is the second greatest contributor to global warming after carbon dioxide.[5]

Unlike traditional greenhouse gases, which become relatively uniformly distributed and mixed throughout the Earth's atmosphere, black carbon holds a regional influence.

The impacts of black carbon on a regional level include both atmospheric heating, as discussed above, and hydrological changes. It is likely that the effects of Black carbon in California will be comparable to its effects studied in Africa and Asia.[6] This includes intensified drought and reduced Sierra snowpack.

Black carbon has a number of negative health effects including an increased mortality rate,[7] chronic bronchitis, blood pressure, and infant mortality due to pneumonia.[8] These effects are in addition to the health effects associated with particulate matter, of which black carbon is one constituent.

O12-6 (Cont.)

b. The DEIS/DEIR Must Quantify Black Carbon Emissions.

Analyzing particulate matter (PM) is insufficient to address black carbon. PM refers to the particles that make up atmospheric aerosols including sulfates, nitrates, and carbon compounds. Because PM can be reduced through mitigation of other constituents of PM rather than black carbon as well as its' significant effects on global warming and health, it is essential that black carbon emission reduction strategies be considered independently from PM reductions.

O12-7

O12-8

Methods are available to specifically quantify black carbon emissions. The DEIS/DEIR makes no attempt to quantify black carbon and this omission must

O12-9

O12-10

[4] Reddy, M.S. & Boucher, O., Climate impact of black carbon emitted from energy consumption in the world's regions. Geophys. Res. Letters. 34: L11802 (2007).

O12-6A

[5] Ramanathan, V. & Carmichael, G., *Global and Regional Climate Changes Due to Black Carbon*, Nature Geoscience 1:221-227 (2008).

O12-6B

[6] Id.

O12-6C

[7] Maynard D. et al., *Mortality risk associated with short-term exposure to traffic particles and sulfates.* Environ. Health Perspect. 115:751-755 (2007).

O12-6D

[8] Schwartz J. *Testimony for the Hearing on Black Carbon and Arctic, House Committee on Oversight and Government Reform United States House of Representatives* (Oct. 18, 2007).

O12-6E

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be rectified. Like greenhouse gas emissions, black carbon emissions from various types of engines and activities can be estimated through numerical calculations.[9] Considering the importance and ability of quantifying black carbon emissions, the DEIS/DEIR should be revised to incorporate an analysis of the MSHCP's contribution of black carbon.

O12-10 (Cont.)

O12-11

III. The DEIS/DEIR Fails to Consider the Full Impacts of Construction and Operations.

a. *The DEIS/DEIR Must Include an Analysis of the Manufacture of Concrete for Construction.*

The DEIS/DEIR fails to consider the impacts associated with the manufacture of concrete which "accounts for roughly 3% of California's greenhouse gas emissions."[10] The Lawrence Berkeley National Laboratory and others have developed methods for analyzing the lifecycle emissions of concrete manufacture.[11]

O12-12

b. *The DEIS/DEIR Must Include an Analysis of Construction Emissions and Operational Emissions Combined.*

This project entails significant construction to take place over 20 years. Thus, construction and operations emissions will take place concurrently. Given the significant construction involved in the development of the MSHCP, the DEIS/DEIR must include an analysis of these emissions combined. Additionally, this analysis should include information on peak daily construction and peak daily operational emissions combined.

O12-13

IV. The DEIS/DEIR Fails to Provide an Accurate Picture of the Project's Growth-Inducing Effects.

An EIS must discuss how the proposed project (if implemented) could induce growth, through directly or indirectly facilitating or removing obstacles to population growth or new development in the surrounding environment.[12] This includes projects that: 1) foster economic or population growth or additional hous-

O12-14

O12-15

[9] Bond T. et al., *A technology-based Global Inventory of Black and Organic Carbon Emissions from Combustion.* J. Geophys. Res., 109: D14203 (2004).

O12-11A

[10] Manaset et al. *Reducing Greenhouse Gas Emissions through Product Life Cycle Optimization*, Ernest Orlando Lawrence Berkeley National Laboratory, Environmental Energy Technologies Division, 2005.

O12-12A

[11] Id.; Flower 2007. Flower DJM, Sanjayan JG (2007): Green House Gas Emissions due to Concrete Manufacture. Int J LCA 12 (5) 282 288

O12-12B

[12] Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337.

O12-14A

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ing; 2) remove obstacles to growth; 3) tax community services or facilities to such an extent that new services or facilities would be necessary; or, 4) encourage or facilitate other activities that cause significant environmental effects.[13] Although a project's growth-inducing impacts may not be adverse, secondary impacts (e.g., loss of open space/habitat/agricultural lands, air quality, transportation, etc.) may be significant and adverse and must be represented in an EIS.

O12-15 (Cont.)

O12-16

NEPA requires environmental reviews to address and describe the indirect effects of a project "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."[14] Under NEPA, indirect effects are those "growth inducing effects and other related effects on air and water and other natural systems, including ecosystems."[15] The GHG emissions emanating from the increased vehicle miles traveled to and from the proposed developments are considered indirect effects, as they are "father removed in distance," "reasonably foreseeable," and are considered "growth inducing effects" since they result from the new developments.

O12-17

O12-18

An adequate growth-inducing impacts analysis should include: 1) estimating the amount, location, and time frame of growth that may occur as a result of the project (e.g., additional housing, infrastructure, etc.); 2) applying impact assessment methodology to determine the significance; and 3) identifying mitigation measures or alternatives to address significant secondary or indirect impacts. The MSHCP DEIS/DEIR fails to analyze the project's growth-inducing impacts; this must be remedied.

O12-19

V. The DEIS/DEIR Fails to Adequately Set Forth the Threat of Greenhouse Gas.

a. The Greenhouse Gas Analysis and Associated Mitigation Measures Are Inadequate Under CEQA and NEPA.

The DEIS/DEIR's exceedingly cursory summary on Climate Change and Greenhouse Gases (3.3.7) is inadequate and fails to fulfill the informational requirements of CEQA and NEPA. Although the California Climate Change Center's

O12-20

[13] CEQA Guidelines § 15126.2(d).

[14] 40 C.F.R.1508.8.

[15] Id.

O12-15A

O12-17B

O12-17B

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figures on projected warming scenarios are included, there is no discussion of what the consequences of those scenarios may be or how global warming will impact the state, the nation, and the world. An "EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects to be considered in the full environmental context."[16] The DEIS/DEIR should, at a minimum, describe the cumulative impacts of global warming on the environment and how increasing GHG emissions will affect those impacts. Furthermore, an EIS "must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published…or…at the time the environmental analysis is commenced, from both a local and regional perspective."[17] The DEIS/DEIR must be revised to adequately inform the public about the risks associated with increasing GHG emissions.

O12-20 (Cont.)

The DEIS/DEIR should include numerical estimates of the extent of projected impacts, including specific information about the projected impacts in California caused by GHG emissions. For example, it should describe that loss for the Sierra snowpack is estimated to be between 30-90%, depending on the extent to which emissions are reduced.[18] Additional impacts projected for California by the end of the century include:

O12-21

- Temperature rises between 3-10.5°F;
- 6-30 inches or more of sea level rise;
- 2-4 times as many heat wave days in major urban centers;
- 2-6 times as many heat-related deaths in major urban centers;
- 1.5-5 times more critically dry years;
- 25-85% increase in days conductive to ozone formation;
- 3-20% increase in electricity demand;
- 10-55% increase in the expected risk of large wildfires; and
- 7-30% decrease in forest yields (pine).

O12-22

By detailing the range of proposed impacts and identifying that the higher-range of impact estimates are projected if GHG emissions continue to increase under a "business as usual" scenario, decision-makers and the public will be better in-

O12-23

[16] CEQA Guidelines, § 15125(c), (emphasis added).

O12-20A

[17] CEQA Guideline § 15125(a).

O12-20B

[18] California Climate Change Center, "Our Changing Climate, Assessing the Risks to California." (2006).

O12-21A

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formed of the magnitude of the climate crisis and the urgency with which it must be addressed. Furthermore, the DEIS/DEIR should consider supplementing its description of global warming impacts with data from the recently released report of the Committee on Environment and Natural Resources, the Scientific Assessment of the Effects of Global Change on the United States (May 2008).

O12-23 (Cont.)

Additionally, the DEIS/DEIR also fails to analyze the greenhouse gas emissions associated with "Plan-Wide Activities." This is also required under CEQA.

O12-24

b. The MSHCP's Impact on Global Warming is Also Significant Under NEPA. Similarly, NEPA requires an EIS to "succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration."[19] Because climate change is serious, its impacts will be felt worldwide, and GHG emissions are cumulative in nature, the DEIS/DEIR must describe the affected environment in sufficient detail to convey the potential risks of increasing GHG emissions.

Although the DEIS provides some inventory consistent with the California Office of Planning and Research technical CEQA guidelines, it fails to recognize the significance of GHG emissions under NEPA. The Ninth Circuit in Center for Biological Diversity v. National Highway Traffic Safety Administration recognized the legal necessity of evaluating the cumulative significance of GHG emissions under NEPA, despite the absence of a quantitative threshold, stating "[t]he impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct."[20] "Thus, the fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency's] control . . . does not release the agency from the duty of assessing the effects of its actions on global warming within the context of other actions that also affect global warming. The cumulative impacts regulation specifically provides that the agency must assess the impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."[21]

O12-25

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[19] CEQA Regulation, §1502.15.

O12-25A

[20] 508 F.3d 508, 550 (9th Cir. 2007) (holding an EA inadequate for inadequate cumulative impacts analysis).

O12-25B

[21] 508 F.3d 508, 550 (9th Cir. 2007) (holding an EA inadequate for inadequate cumulative impacts analysis).

O12-25C

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Furthermore, by substantially increasing California's existing emission levels, the MSHCP threatens the successful implementation of the California Global Warming Solutions Act (AB 32, 2006) and Executive Order S-3-05, which require reductions of current levels of emissions in California.[22] Accordingly, a revised DEIS/DEIR must be prepared that adequately analyzes the cumulative significance of the MSHCP's GHG emissions on global warming under NEPA.

O12-25 (Cont.)

VI. DEIS Fails to Provide Feasible Mitigation Measures and Alternatives.

The MSHCP's DEIS must provide adequate measures for air quality (including black carbon) and greenhouse gas emissions. Some measures to be considered are included below:

- Use of Renewable Power for Electricity Generation:

The feasibility of generating on-site and off-site renewable electricity generation should be explored. The MSHCP should consider and maximize the use of solar power as a self-generated source of renewable energy. The installation of photovoltaic panels on all buildings, parking lots or carports within the plan, as well as to houses, schools and buildings within the MSHCP could make a large impact on the amount of carbon emissions for the project.

  - Photovoltaic panels are a renewable, clean energy source that would provide 3.6 MWh/year per average household for 250 square feet of PV panels, saving approximately over 3,000 pounds of CO2 and over a thousand dollars per average household annually.[23]
  - The solar industry is one of the few construction sectors currently growing, with solar companies employing between 16,500-17,500 California workers and expecting to hire approximately 5,000 more in the next year. Most of these jobs are in installation, requiring

O12-26

[22] *See* 40 C.F.R. § 1508.27(10) (factor in significance determination includes whether action threatens to violate federal, state, or local law or requirements); *see also* Executive Order S-3-05 (June 1, 2005) (setting greenhouse gas emissions reduction targets for California); Control of Emissions From New Highway Vehicles and Engines, 68 FR 52922 (September 8, 2003) (affirming EPA's recognition of climate change and the need to reduce greenhouse gases).

O12-25D

[23] Assumptions: 50% capacity, annual usage is 7200 KWh/year, average electricity rate is $0.1738/kWh. http://www.findsolar.com/index.php?page=rightforme

O12-26A

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limited training and providing annual salaries ranging from $31,200 to $60,000.[24]

- Utilize Recycled Materials:

Use of recycled materials will lessen the carbon footprint of the MSHCP. The DIES should commit to using recycled materials whenever possible in the construction and operation phases of the MSHCP.

- Construction Equipment:

Equipment[25] greater than 25 horsepower must:

(1) Meet current emission standards[26] and

(2) Be equipped with Best Available Control Technology (BACT)[27] for emissions reductions of PM and NOx, or

(3) Use an alternative fuel.

- Preferential Contracting with Clean Truck Companies:

Preferential contracting with the cleanest trucking companies for construction can provide incentives for additional air quality and greenhouse gas reductions.

- Diesel Trucks:

On-road trucks used at construction sites, such as dump trucks, must:

(1) Meet current emission standards, or

(2) Be equipped with BACT[28] for emissions reductions of PM and NOx, and

(3) Any trucks hauling materials such as debris or fill must be fully covered while operating off-site (e.g. in transit to or from the site).

- Generators:

Where access to the power grid is limited, on-site generators must:

(1) Meet the equivalent current off-road standards for NOx, and

O12-26 (Cont.)

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[24] Baker, David. *Solar industry needs workers.* San Francisco Chronicle. May 8, 2008. http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/05/10/BUGD10JVGP.DTL

O12-26B

[25] Equipment refers to vehicles such as excavators, backhoes, bulldozers propelled by an off-road diesel internal combustion engine.

O12-26C

[26] These standards are described in Division 3 Chapter 9, Article 4, Section 2423(b)(1)(A) of Title 13 of the California Code of Regulations, as amended. An explanation of current and past engine standards can also be accessed at http://www.dieselnet.com/standards/. Currently all new equipment is meeting the US EPA Tier II standards and most equipment also meets Tier III standards (all 100HP to 750HP equipment). Note that Tier IV standards would automatically meet the BACT requirement.

O12-26D

[27] Here BACT refers to the "Most effective verified diesel emission control strategy" (VDECS) which is a device, system or strategy that is verified pursuant to Division 3 Chapter 14 of Title 13 of the California Code of Regulations to achieve the highest level of pollution control from an off-road vehicle.

O12-26E

[28] Here BACT also refers to most effective VDECS as defined by the California Air Resources Board (CARB).

O12-26F

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(2) Meet a 0.01 gram per brake-horsepower-hour standard for PM, or
(3) Be equipped with Best Available Control Technology (BACT) for emissions reductions of PM.

- Special Precautions Near Sensitive Sites:

All equipment operating on construction sites within 1,000 feet of a sensitive receptor site
(schools, playgrounds, etc.)[29] should either:
(1) Meet US EPA Tier IV emission standards or
(2) Install ARB Verified "Level 3" controls (85% or better PM reductions), and
(3) Notify each of those sites of the project, in writing, at least 30 days before construction activities begin.[30]

O12-26 (Cont.)

VII. A Revised Draft EIS/EIR Must Be Prepared and Re-circulated.

Due to the inadequacies highlighted above, the Tehachapi Upland Multi-Species Habitat Conservation Plan draft Environmental Impact Statement and the Tejon Mountain Village draft Environmental Impact Report cannot form the basis of a final EIS/EIR. Additionally, the DEIS/DEIR states throughout the document that "[w]ithout additional detailed information about the specific nature of development that would occur, use of the default assumptions is appropriate."[31] Additionally, the significant impacts highlighted in the Tejon Mountain Village DEIR must be included in the MSHCP DEIS.

O12-27

In order to address these defects and satisfy CEQA and NEPA, the MSHCP and TMV DIER must provide "significant new information" to adequately analyze environmental impacts and identify effective mitigation and alternatives. The DEIS/DEIR must then be re-circulated. This is essential "to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn there from."[32] An agency cannot release a draft EIR "that

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[29] Sensitive sites are defined and described in the CARB Air Quality and Land Use Planning Guidelines, 2005; http://www.arb.ca.gov/ch/landuse.htm.

O12-26G

[30] Notification shall include the name of the project, location, extent (acreage, number of pieces of equipment operating and duration), any special considerations (such as contaminated waste removal or other hazards), and contact information for a community liaison who can answer any questions.

O12-26H

[31] DEIS/DEIR 4.3.2

O12-27A

[32] *Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors*, 122 Cal. App. 3d 813, 822 (1981); *City of San Jose v. Great Oaks Water Co.*, 192 Cal. App. 3d 1005, 1017 (1987).

O12-27B

TriCounty Watchdogs

...protecting mountain resources and communities in Kern, Los Angeles, and Ventura Counties.

hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review."[33]

O12-27 (Cont.)

Thank you very much for considering our views.

Sincerely,

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www.tcwdogs.org

Executive board

TriCounty Watchdogs

[33] *Mountain Lion Coalition v. California Fish and Game Comm'n*, 214 Cal.App.3d 1043, 1052 (1989).

O12-27C

Comment Letter I18

"Stefano Allavena" <altura_allavena@yahoo.it>
07/08/2009 12:33 AM

To: <fw8tumshcp@fws.gov>
cc:
Subject: urbanization of Tejon Ranch

ALTURA is an italian NGO that has the goal to protect birds of prey and their habitats. Our members are all expert in birds of prey, their biology, their conservation status. ALTURA means: Associazione per La Tutela degli Uccelli Rapaci e dei loro Ambienti. I18-1

ALTURA considers a big mistake to urbanize also partially Tejon Ranch that is an area not only very important but essential for the very endangered California condor. We hope that all the area will be completely protected against urbanization. I18-2

Sincerely yours

Stefano Allavena
President of ALTURA

Comment Letter I30

Eric Anderson
<ericroy@frazmtn.com
>

To: fw8tumshcp@fws.gov
cc:
Subject: Possible Extension of Deadline

04/16/2009 03:10 PM

Pacific-Southwest Regional Office
Attn:Mary Grim
2800 Cottage Way, Room W-2606
Sacramento, Calif. 95825
or
Ventura Fish and Wildlife Office
Attn: Steve Kirkland
2493 Portola Road, Suite B
Ventura, Calif. 93003

Dear Mary,
In light of the size of this Draft EIS for the Tehachapi Upland Multiple Species Habitat Conservation Plan HCP
and the important impacts it will have for years to come, please consider extending the deadline in order to give the

public more time to study it for comments.

I30-1

Thanks,

Eric Roy Anderson
<www.EricRoyAnderson.com>
http://www.imdb.com/name/nm0026677/#cinematographer
Cell 310 740-7678
Home 661 245-5929

Comment Letter I41

apoloniamutoni5@idiva
.com

05/14/2009 02:01 AM
Please respond to
Apolonia

To: undisclosed-recipients:;
cc:
Subject: My dear friend,

My dear friend,
Hope you are doing just fine over there.My name is Apolonia. I just want to let you know that l came accross your profile and your e-mail adderss from. www.fws.gov after going through it l found you intresting,hope you don't mind.
If you are intrested in knowing more about me and for me to send you my picture,just feel free to contact me at my private mail addresse at(apolonia.mutoni@yahoo.com)
Hope to hear from you soon,have a nice day and stay blessed.
Apolonia

I41-1

Comment Letter I74

"Perse DarkMoon" <perse-darkmoon@sbcglobal.net>

02/21/2009 01:41 PM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Comments on the draft MSCHP and draft EIS for Tejon Ranch Company

To Whom it May Concern,

My family and I, who are Mountain Community residents, provide this comment out of deep concern for what we know will be a HUGE mistake in granting any permits for TRC to develop. There presently exist no eco and/or biological beneficial reason, other than monetary greed on behalf of TRC and its shareholders, to allow development and/or the issuance of any permits, especially 50 year "incidental take permits" which would absolve TRC of liability for the death of protected species during development should development be allowed. We do not need spas, commercial shopping centers, golf courses, resorts/hotels and/or an additional 26,000 homes which would be constructed (this doesn't take into account the additional 23,000 homes of the proposed Centennial development which is also unnecessary). The wildlife now living in these mountain ranges were here long before we were and should remain, intact, as it is, for us now and our children's children in the future. — I74-1

We're quite sure you are aware that there are presently over 80 imperiled species of plants and animals habitating in these ranges and, who live nowhere else on Earth. Why then, would one even consider invading these areas for unnecessary residential and commercial development? Surely TRC with its 275,000 acres (i.e., 429.6875 square miles) can develop in another location if development is deemed such a necessity. How about at the bottom of the Grapevine on the land across/near their 2 million square foot IKEA development? — I74-2

The continued comeback and rehabilitation of the California Condor is imperative and depends upon its habit, along with the 79 other imperiled species, remaining undisturbed. There is absolutely no reason whatsoever for permits to be granted when it serves absolutely no ecological or biological purpose and is 100% demonstrative of the fact that certain death will occur not only to the plant life but the animals inhabiting this land. These mountain ranges are pristine and majestic--the exact reason why they should be left alone, as they are. In fact, because of its history alone we truly believe this land should be preserved and protected, forever, just as the massive and beautiful Sequoias are, just as Yosemite Valley. — I74-3

If anyone has ever been lucky enough to view a Condor, the same birds who, not too many years ago were on the brink of total extension, in flight in their natural surroundings then you already know that anything that threatens their survival should never be allowed, no matter the cost, no matter the reason. Our family during a weekend drive near the Bittercreek National Wildlife Refuge, taken to explore our new surroundings after relocating from the County of Los Angeles two and a half years ago, were just so lucky. We viewed not just one but three of these magnificent birds soaring the thermals while stopping to allow a tarantula to safely cross the road. It was breathtaking and my heart sank into the pit of my stomach as we watched these beautiful birds from the side of the road. I, my husband and our then 11 year old daughter were overcome with emotion and each of us, though standing separately, were immediately brought to tears. To be graced with a fly-by at eye level, to actually see their massive wing span, the red and yellow on their faces, was utterly amazing, a sight that neither of us will ever forget. The mere thought of anyone infringing upon their surroundings, or that of any of the imperiled wildlife, after we, the people, have fought so hard and invested so much to save them is completely and utterly disgusting. I74-3 (Cont.)

With respect to hunting, although TRC is claiming, from what I can gather that they will not take lethal action by "hunting" any of the species dwelling upon the land, they wish to not be held accountable for those that they kill during the excavation/destruction of the land for their unnecessary development. I would honestly like to know the amount of the fine that was paid when the 50 year old matriarch Condor was "accidentally" killed by a stray bullet during a wild pig hunt held on the TRC land in 2003? Or was this just swept under the rug? The mere fact that firearms, first of all, would be allowed to be discharged in known extreme fire zones let alone areas frequented and inhabited by protected species is unacceptable to say the least and should have never been permitted. And let's not mention the most recent development of the increased lead, which we wholeheartedly believe is in great part due to the hunting allowed in the ranges which, is now making the Condors ill---it will only be a matter of time before this poisoning reaches other species and potentially our precious ground water. I74-4

Additionally, are we forgetting the Native American sacred sites and historical villages that will also be destroyed in the development? Or, are they not to be recognized or considered either? If we can protect 1.4 million acres, even though not contiguous, for the California Red-legged Frog (one species mind you) then surely it is as equally important to protect over 80 imperiled species combined of plant and animals living in the Tejon Ranch mountain ranges which include the San Joaquin Kit Fox, California Spotted Owl, and the Tehachapi Slender Salamander just to name a few. [Anyone familiar with the surrounding area knows that one of the most beautiful camping spots in California (i.e., Blue Point campground, Lake Piru) has been closed for years and remains closed to this day in order to continue the protection of the Red-legged Frog. Why then would the destruction of such a vital ecosystem be allowed?] I74-5

For this and many, many other reasons we urge you to deny to the issuance of permits of any kind to allow for the utter destruction of the last and untouched, pivotal wildlife areas in our state. To allow this would be a travesty, now and for future generations. If Tejon Ranch wishes this family to believe that they are truly "Preserving California's Legacy" then they should do just that and not destroy it.

Thank you for allowing us the ability to provide our comments. We truly hope that they are considered.

Mr. & Mrs. G. Balbona & Family
Frazier Park, CA

Comment Letter I157

"Ron Bottorff" <bottorffm@verizon.net>

04/21/2009 07:48 PM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Tejon HCP Extension

Please extend the comment period on the Tejon HCP by 120 days. It is a very large docunment, consultants and other experts need more time for data analysis and checking, and the USGS Condor study should be completed and the results integrated ionto the document. **I157-1**

Ron Bottorff
Friends of the Santa Clara River

Comment Letter I163

"Ray Boyd"
<rajoboyd@ca.rr.com>
05/04/2009 09:17 PM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Tejon Multi-Species Habitat Conservation Plan

I respectfully request that you vote no on the Tejon Multi-Species Habitat Conservation Plan because hunting is not part of the plan, fire prevention is not part of the plan, control of feral pigs is not part of the plan, nor is hunting of coyotes part of the plan. **I163-1**

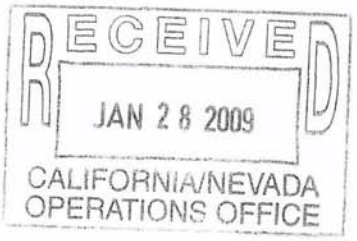
Thank You: Ramon Boyd, Costa Mesa, CA.

Comment Letter I213

cy: [redacted] Mike F [redacted] Marge
Ren
Alex

DKm 1/29

January 26, 2009



TO:

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

Assembly member Pedro Nava
P.O. Box 942849
Sacramento, CA 94249

Kern County Board of Supervisors
1115 Truxtun Ave., 5th floor
Bakersfield, CA 93301

Ken McDermond
Deputy Regional Director, California Nevada Region
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

Don Geivet, Wildlife Management
Tejon Ranch
P.O.Box 1000
Lebec, CA 93243

Dr. Noel F. R. Snyder
Condor Recovery Team
P.O. Box 189
Portal, AZ 85632

RE: The Condor Recovery Program: A Tragedy For Californians
[A RESPONSE to "Condor Experts'" Letter Dated June 7, 2008 as if relates to Tejon Ranch & Tehachapi Uplands Multi-Species Habitat & Conservation Plan.]

Dear Sir(s) and Madam(s):

I213-1

It is not surprising that this "team" of biologists and other special interests that receive grants and funding to study and promote the "condor recovery" would be opposed to any curtailment of this dubious wildlife program. It certainly would adversely affect their income. However, they apparently do not seem to be concerned how it adversely affects taxpayers, outdoors people and private land holders. During this time of national

economic hardship, especially in California, it is now time for this federal program to be reassessed with a critical eye. As the program is presently constituted, it is a complete failure and has cost millions of dollars to fund. The program basically hatches condor eggs in captivity and uses puppets to mimic adult birds. Once released, condors are hand-feed by biologists and their aides who bring dead carcasses (chiefly stillborn dairy animals) to various outdoor locations. Let us call the program what it truly is: **An Outdoor Zoo Program**. These animals are unable to breed by themselves in nature and hazards are everywhere. They are unable to distinguish between carrion and plastic bottle caps and other human debris so their insides get clogged. Government restrictions have been placed on landowners, residents, developers and recreationists to protect the condors with no statistically positive affect. The only tangible effect is added legal costs and inconveniences for landowners and recreationists and in the condor areas. Government officials, scientists and effected citizens spend countless hours in meetings, writing reports, writing letters in an endless effort to cope with this program which is a failure.

I213-1 (Cont.)

I offer a simple solution. **Bring the condors back inside**. Place them in our zoos and take care of them there. The budget for this program could be reduced by 90% and the remaining 10% could be used to bring the condor back inside zoos where Californians will actually be able to see the condors. Right now only the esoteric few who study them and handle them get to see them. Open up the Condor Program to the people of our state by bringing the birds inside!

I213-2

An example of the preposterous position of the condor special-interest group that wrote the referenced letter above is how they vilify Tejon Ranch who is willing to open up vast areas of their private land for conservation and natural habitat. The ranch, I am sure, is very concerned about potential federal legal problems if a condor should die on their property and has taken steps to legally protect themselves. Tejon Ranch does not want to hunt or kill a condor but, you can bet this group of people would quickly be after them with a lawsuit should one happen to die on their property. This is an example of people who have taken the idea of "condor stewardship" to extremes and now are only serving their own special interests and prejudices.

I213-3

Another example of the condor special-interest group's irrational approach is how they say that, "…any increased human activity,…home sites and any mining or increased human disturbances…" must not take place in any condor area. On what do they base their arguments? The condors fly all over the state to many areas of human activity. They find human debris everywhere and eat it. Eating junk is more dangerous to the condor's survival than any increased "human activity". Their ideas do not make sense other than to preserve and justify their own jobs. If they really want to save the condor then, "bring them inside". It is time to say, "Enough" to the condor special-interest group. They have lost their way and need to be re-centered with a dose of common sense.

I213-4

We depend on our Governor and other elected representatives to be good stewards of our tax dollars and to make good policy decisions based on fact but also with a healthy dose of common sense. We can no longer afford this condor program; it must be rolled back

I213-5

and ended. It has been a failure and should be recognized as such. Stop adding and abetting an outdoor zoo--"bring the condor inside" where the citizens of this state can at least view one. Please work for that!

I213-5
(Cont.)

Sincerely,

John W. Burk, D.M.D., B.S. Biology, Naturalist, Rancher
226 La Vista Grande
Santa Barbara, CA 93103
(JBURK226@cox.net)

Comment Letter I216

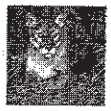
Subject: Tejon Ranch draft TUMSCHP
From: "Eric L. Burr" <burrski@methownet.com>
Date: Sat, June 13, 2009 1:58 pm
To: fw8turnshcp@fws.gov
Priority: Normal
Options: View Full Header | View Printable Version | Download this as a file

Dear planners, As a retired Nat'l Park ranger I'm intimately aquainted with the problems involved with NPS management. I'm also a member of the Society for Conservation Biology, from whom I received notice that you're open to comments on the plans for Tejon Ranch. No, you don't want a Nat'l Park! A private/public partnership conservancy with built in flexibility to allow rapid response to changing biological conditions is the better way to go.

We have a similar situation involving North Cascades Nat'l Park, where I'm recommending Nat'l Recreation Area instead of Nat'l Park. They might manage it, but allow hunting as they currently do in their Lake Chelan NRA. We've got Wolves, Griz, Spotted Owls, Wolverines, and Fishers, all in the ESA hot seat up here.

Sincerely, Eric Burr- Mazama,Washington

I216-1



Eric L Burr
585 Lost River Rd
Mazama, WA 98833

John Robles
Pacific-SW. Regional Office
FWS
2800 Cottage Way
Rm. W-2606
Sacramento, CA 95825

509/996-3001
burrski@methownet.com

Please excuse the snail mail, but my computer bounced this as an e-mail.

E. Burr

Comments on Tehachapi Multi-species Habitat Conservation Plan and Draft Environmental Impact Statement

David A. Clendenen

Janet A. Hamber

Dr. Allen Mee

Dr. Vicky J. Meretsky

Anthony Prieto

Fred C. Sibley

Dr. Noel F.R. Snyder

William D. Toone

General Summary of Comments

As former, and in two cases ongoing, direct participants in the California Condor conservation program, we have special concerns about the impacts of the Tehachapi Upland Multi-species Habitat Conservation Plan on condors, and in the following remarks we limit ourselves to condor issues. Our overall conclusion is that the proposed actions appreciably reduce the likelihood of recovery of the California Condor and adversely modify critical habitat and are thus enjoined under the language of the Endangered Species Act. I294-1

The major ultimate goal of recovery efforts for the endangered California Condor, as identified in the Recovery Plan, is achievement of multiple large and self-sustaining wild populations of the species. Truly wild and self-sustaining populations are not ones that are maintained by constant releases of captives to the wild or by intensive life-support management efforts. Also intrinsic to full recovery of the species is achievement of populations occupying habitats that have been determined to be critical for the species, and populations that are behaving in a manner typical of the species, including normal reproductive and foraging behavior. To the extent possible, management should ensure that condors can fend for themselves. Management intervention involving matters such as provisioning of food should occur only when self-sustaining scenarios are impossible. This strategy maximizes the resilience of the condor populations and minimizes the financial costs and risks of management. I294-2

Unfortunately, the Tejon MSHCP proposes actions that will greatly reduce natural food supplies in a very important portion of condor Critical Habitat, and will strongly inhibit condor use of the same area through multiple effects of urbanization. The proposal to mitigate these effects mainly by establishing feeding stations in areas outside Tejon Mountain Village (TMV) is not consistent with ultimate recovery goals of the conservation effort. Experience with the release program so far gives evidence that feeding stations adversely affect condor foraging behavior and movements and result in detrimental tendencies toward microtrash ingestion and human habituation (see Mee et al. 2007, Snyder 2007, Mee and Snyder 2007). Feeding programs further presuppose a perpetual and expensive, but ultimately unnecessary, obligation to provide a food supply for the birds – an obligation that can be expected to be difficult to maintain continuously in the long term in the face of inherent instability in human institutions. Clearly a population dependent on a long-term feeding program is not a truly self-sustaining population and cannot be considered a fully-recovered population. I294-3

In studying the MSHCP and accompanying DEIS we find that both documents consistently favor nonconservative interpretations of data. When endangered species Critical Habitat is affected by a development proposal, the U.S. Fish and Wildlife Service is obliged to ensure that if mistakes are made in judgments, they will favor the species by minimizing risks of adverse impacts. These documents fail to meet that precautionary standard in a number of crucial respects. A more realistic assessment of impacts suggests I294-4

that the development plans proposed will cause harm to condors by significantly reducing the amount of high-quality foraging habitat and by introducing a suite of negative factors to an important portion of condor habitat hitherto free of such impacts. Development may also alter movement patterns of the species, increasing flight times and energetic costs of moving among various important use areas in the species' range. As a result we strongly recommend rejection of these documents. I294-4 (Cont.)

A. Importance of Condor Critical Habitat on Tejon, and more specifically, the Importance of the Tejon Mountain Village (TMV) region to Condors.

Critical Habitat was established for condors on Tejon Ranch in 1976 to ensure long-term viability of foraging and roosting sites that were known to have been heavily used by condors from many years of historical records. This designation reflects some unique qualities of the ranch that cannot be fully matched by other portions of the species' range. The components most critical to condor use of Tejon Critical Habitat are: I294-5

1. An abundant food supply of carrion created by traditional livestock grazing operations, by high populations of native ungulates such as deer, and by recreational hunting activities for ungulates such as deer and feral pigs. I294-6
2. Strong and reliable winds coming up out of the San Joaquin Valley that interact with the specific topography of the region to support highly efficient foraging movements of the birds. I294-7
3. Strong populations of other scavengers such as Common Ravens and Golden Eagles that the condors make use of in locating food efficiently. I294-8
4. A unique geographic position of the ranch rendering it a central crossroads for condor movements between other important use areas within historic condor range as a whole, for example between the Sespe Sanctuary and the southern Sierra Nevada, and between the Coast Range and the Sierra Nevada. I294-9
5. A long history of isolation and freedom from various detrimental human influences associated with urbanization. I294-10
6. Availability of suitable overnight roosting locations. I294-11

The importance of the lands involved has been repeatedly affirmed over the years by US Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) public statements (see our Appendix 1). Data accumulated more recently, much of it through radio telemetry and most recently by GPS satellite telemetry, have clearly confirmed the heavy use of this region by condors and indicate that the lands included in Tejon Critical Habitat were indeed appropriately identified in the official designation (see our Appendix 2), including the areas proposed for TMV within Critical Habitat. I294-12

Although the MSHCP and DEIS do not deny the importance of condor Critical Habitat on Tejon, they misrepresent the importance of TMV lands in particular to condors and provide no plausible arguments or evidence for their conclusion that conversion of TMV lands to residential development, together with mitigation I294-13

actions, will lead to net benefits for condors, justifying approval of the MSHCP. We suggest instead that from our experience on TMV lands and other Tejon lands, and from examination of other available records on use of these lands by condors, TMV lands are indeed some of the most important areas for condors within Critical Habitat and that conversion of these lands to residential use will have major negative effects on the viability and value of Critical Habitat, with or without the proposed mitigation measures.

I294-13 (Cont.)

A number of data sets have been assembled showing condor usage of Tejon Ranch, both by proponents of the development proposals and by others. In Appendix 2 we present a summary recently prepared by C.B. Cogan of important data sets. These range from the McBee Card assembly of visual reports (1890-1984) to telemetry records from the 1980s, and most recently to GPS condor locations of the USFWS in the release program initiated in the 1990s. Accurate data gained by various means on condor locations throughout the species' range between 1982 and 1987 were earlier analyzed and summarized by Meretsky and Snyder (1992), and serve as a comparison for analyses of data limited to Tejon.

I294-14

All the data sets in our Appendix 2 have some bias, although bias varies from set to set. Nevertheless, all data sets show considerable similarity to one another in the general patterns of use of various regions by condors and show substantial use of the TMV planning area. Evidently, condor use of Critical Habitat areas on Tejon has been exceedingly stable over a very long period of time.

I294-15

The earlier data sets (both visual and ground-based telemetric), which are dependent on line-of-sight detections and near line-of-sight detections of birds (in the case of telemetry) are biased both by variable blockage by topographic features and by nonuniform coverage of the ranch by observers, especially in the sense that ranch roads are found only in portions of the ranch and condor observers have traditionally favored these areas (e.g.,Winter's Ridge) in seeking condors. The observer bias effect is largely neutralized in the satellite-based GPS position data of the most recent years, although this data set cannot be said to be fully free of potential bias, since it covered only a portion of the released population and for relatively few years. Nevertheless, because it does involve a fair number of birds and greatly reduces error resulting from observer position bias, this is one of the more useful data sets in informing us of the location of at least some of the important portions of Critical Habitat on Tejon.

I294-16

The full GPS point-data set available from USFWS (see Cogan Fig 6, our Appendix 2) indicates that the TMV planning region has been one of the most heavily used portions of condor Critical Habitat in recent years. Yet for reasons that are not clearly presented in the MSHCP (section 4.4.3.1.1), the TMV Planning Area has been excluded, as habitat unimportant for condors, from the CSA (the Condor Study Area to be left free of development). As condor records within the TMV are numerous and as we have personally seen condors engaged in

I294-17

activities such as feeding within the TMV, we believe that the boundaries of the CSA are inappropriate and exclude much of the important habitat for condors within Critical habitat. The boundaries of the CSA, although they may be convenient for allowing development in TMV, are unsupported in any rigorous or defensible way by analysis of available condor locations.

I294-17 (Cont.)

In fact, when a half-mile buffer is provided around each GPS data point, as seen in Cogan's Figure 14 (our Appendix 2), the great majority of the TMV planning area is covered. How much buffer should be indicated around each data point is a matter that can be debated and may vary with the sort of use of an area made by condors and by humans, but we note that the MSHCP and DEIS do not provide any consideration of buffers around condor location points in their various analyses, which is not a conservative way to view the data. With respect to the known sensitivity of historic condors to disturbance when feeding on carcasses, a half-mile buffer may well be too limited with respect to long-term sustained use. Buffers that have been suggested in past documents have ranged from .5 miles for roosting and bathing sites to .8 to 2.3 miles for nesting sites (see Text Box 1 following Figure 14 of our Appendix 2).

I294-18

Significantly, while the full GPS point-data set available from USFWS is presented in the Cogan report (our Appendix 2, Figs. 6, 14), the most recent GPS data set (May 1, 2008 to December 31, 2008) is not included in the MSHCP and DEIS documents, and many of the condor positions during this period are within the TMV Planning Area, suggesting heavy use of the area. Further, interpretation of the significance of the location records in these documents is difficult for the reader because the boundaries of Critical Habitat are not presented in the same figures. The absence of the most recent GPS data set from these documents is not explained but tends to underestimate use of the TMV area by condors. Even the full GPS data set, because of its limitations, cannot be assumed to capture all locations on Tejon important to full condor recovery in the long term.

I294-19

The MSHCP statement that only 3% of GPS locations of adults and subadults from April 2002 to June 2008 pertain to Tejon gives an unrealistic feel for importance of the ranch to condors, as it ignores the context of the GPS data. Condor movements during most of 2002-2008 were strongly influenced by the location of feeding stations near release areas and on Bitter Creek NWR that were far from Tejon, and many of the released birds had not yet discovered Tejon. The Tejon Ranch specifically sued the USFWs in the mid 1990s to prevent releases near or on the ranch, and for much of the period of GPS records, many of the birds monitored were still closely tied to release areas and had not yet developed anything approaching normal ranging behavior.

I294-20

Thus the percent of GPS records that came from the ranch during this period cannot be considered representative of what can be expected in the long term and is highly misleading. Indeed, the point of most importance is not what percent of past GPS records pertain to Tejon, but the fact that many birds in the condor

I294-21

population with no prior experience on Tejon have begun to use Tejon Ranch in very recent years with no encouragement from the release program or Tejon. The recent reoccupancy of Tejon by released birds is one of the most powerful indications of the importance of the ranch to recovery of the species, and condor use of the ranch can be expected to reach and maintain high levels in the years ahead if the ranch is not degraded by development or other detrimental changes in management policies. Indeed, by June 2009 all GPS monitored birds in the southern California population were being documented using Tejon (J. Grantham, USFWS, pers. comm.), even though June has not been a peak month for use of Tejon in historical data sets (see Meretsky and Snyder 1992). The heavy use of Tejon in data for 2008 and 2009 is consistent with increasing importance of Tejon relative to other foraging areas, due in part to the continuing loss of other foraging areas to development.

I294-21 (Cont.)

For the reasons stated at the beginning of this section, Critical Habitat on Tejon is high-quality foraging habitat for condors, and clearly all areas within condor range are not equal in the eyes of condors. Recovery efforts need to work within established condor use patterns, not against them, and should not attempt to establish new patterns that are likely to be less efficient and less sustainable than those the birds have historically followed. The heavy historic and recent use of Critical Habitat on Tejon Ranch by condors appears to be no accident, and with the ongoing major losses of other foraging areas to development, it remains crucial not to degrade specific important areas on the ranch if full recovery of the species is to be achieved.

I294-22

The MSHCP makes much of the general conclusion of condor researchers (including ourselves) that decline of the historic condor population was not due primarily to habitat loss but to various mortality factors (see MSHCP pages 4-33. 4-44, 4-48). Nevertheless, all informed condor biologists to our knowledge fully expect that foraging habitat will become an important limiting factor as mortality factors are brought under control and the condor population recovers (see Snyder 2007), especially because of the progressive losses of foraging habitat to urbanization and other forces that have been occurring in recent decades. The importance of Tejon Critical Habitat to the future of the condor has been becoming steadily more crucial, and, if anything, the areas of Tejon that have been designated Critical Habitat are too conservative in view of the data in Appendix 2. Indeed the location records in Appendix 2 suggest that eastern portions of the township to the west of the southernmost township within critical habitat have had enough condor use to justify their inclusion. Notably, these areas also coincide with TMV development.

I294-23

Losses of condor foraging habitat in recent decades have been massive. We note in particular, the recent and prospective losses of condor foraging habitat in the Simi Valley, San Fernando Valley, and Santa Clara Valley (Newhall Ranch slated for 21,000 new homes) and the Hathaway Ranch (6000 acres for sale for potential development adjacent to the Hopper Mountain National Wildlife

I294-24

Refuge). These areas have not been officially identified as Critical Habitat, but they are important historic foraging areas for the species, and their progressive loss to development makes the few foraging areas that have been identified as Critical Habitat all the more crucial to future recovery of the species.

I294-24 (Cont.)

On page 39 of Appendix C, the MSHCP misrepresents the Recovery Plan by stating that "the loss of foraging and [sic?] habitat is not considered an important factor with respect to the recovery of the condor (FWS 1996)." Actually, what the Recovery Plan states on this subject (page 27) is "An important factor in the establishment of wild condor subpopulations is the existence of suitable habitat."

I294-25

B. Negative Impacts of the MSHCP on California Condor Critical Habitat

One of the surest ways to degrade condor habitat so that it will not be viable for long-term use by the species is to develop the lands in question for urban or surburban living areas. The historical record is clear in indicating that the original wild condor population did not occupy or utilize urban or suburban areas. The reasons for this surely include, but are not limited to, various forms of molestation of birds by humans, limited food supplies, collisions with overhead objects and wires, microtrash ingestion by the birds, sensitivity of the birds to human disturbance when feeding on carcasses, and exposure of birds to environmental pollutants. Many of the problems that have been encountered in condor releases so far, some of them lethal, trace to released birds being overly attracted to humans and civilization, in part because of their captive experience (Mee et al. 2007). Major efforts are currently being made, both before and after release, to ensure that released birds have as little contact as possible with civilization and people and that the birds interacting with people and civilization receive negative reinforcement for such behavior.

I294-26

Thus, placing a major housing development in the midst of the most important historic foraging area known for condors cannot be viewed as anything other than a major threat to recovery of the species. We view the proposed TMV development as clearly representing a "take" of California condors and "adverse modification" of Critical Habitat that has grave implications for recovery of the wild population.

I294-27

The MSHCP states that the TMV Planning Area consists of 19,091 acres of Condor Critical Habitat (14.5% of Critical Habitat on Tejon), yet claims the actual area of impact will be only 1,337 acres (Appendix C, page 38). This remarkable assertion is based on reasoning and calculations that are not fully presented and presume unrealistic habitat specificity in the condor. The assertion lacks credibility, especially in view of the amount of acreage that will be withdrawn from hunting (presumably at least the full TMV as stated tangentially on page 43 of Appendix C). Indeed, in our view one of the most important impacts of TMV will be the incompatibility of home developments with continued hunting (hence eliminating a dispersed food supply for condors – see

I294-28

following paragraphs). Hunting will necessarily be proscribed in the region because of the risk of stray bullets to people, objectionable noise pollution, and desires of residents for viewing wildlife species. As stated in Appendix C (page 43), hunting will not continue in TMV, and in fact it is only reasonable to assume that hunting restrictions will have to extend far beyond the 2-acre impact zone projected for each residence, thus leading to a much greater impact area represented by TMV than claimed, simply on the basis of this one issue alone. Other features of the MSHCP may also affect much more acreage, as will be discussed below.

I294-28 (Cont.)

Inexplicably, the positive importance of hunting to condor conservation and recovery, and the exact areas that will be excluded from hunting are not presented in the MSHCP and DEIS (see MSHCP section 2, page 8). Yet loss of a dispersed hunting-created food supply for condors in the TMV region is one of the most important negative effects of the development proposal. Similarly, the exact areas that will be excluded from grazing within and adjacent to TMV and the amount of grazing that will continue on other lands are not specified in the documents, yet reductions in the spatial and absolute levels of grazing likewise must be considered major negative impacts because the presence of cattle herds also is a source of dispersed carcasses. We suggest that there is no justifiable basis for omitting consideration of these matters, and their omission renders the entire MSHCP and DEIS documents highly incomplete and defective in recognizing and evaluating negative impacts.

I294-29

Natural condor foraging behavior depends on the existence of a dispersed food supply, necessitating large time investments of the birds in searching for food. When provided with reliable food subsidy at predictable sites, the birds tend to greatly reduce their foraging activities, and have much time available for maladaptive behaviors such as trash ingestion, and interactions with humans and human structures (see Mee et al. 2007). Because of such problems, recent efforts have been made to move condor feeding stations to locations much more distant from nesting areas, and this has resulted in some reduction in maladaptive behaviors, although still not complete disappearance of such behaviors (J. Grantham, USFWS, pers. comm.). Unlike the earlier situation, the released birds are now faced with lengthy commutes from nests to food which occupy a much larger fraction of their time budgets than before.

I294-30

The ideal foraging situation, from a behavioral standpoint, is a fully dispersed and unpredictable carcass supply, and now that lead ammunitions have been banned from condor range by the state of California, the principal short-term reason for feeding stations (a reliably uncontaminated food supply) is on the way to becoming obsolete. Once compliance with no-lead ammunitions becomes fully effective, there will be no need for feeding stations, provided dispersed hunting continues as an established activity in condor range. In fact, feeding stations become an undesirable practice overall because of their behavioral disadvantages (see Snyder 2007, Mee and Snyder 2007). They also represent a basically risky

I294-31

conservation approach in the long term from the standpoints of (1) ensuring continuity of supply in the face of unknown future administrative and fiscal restraints, and (2) potential dietary difficulties for the condors inherent in reliance on limited food supplies such as the stillborn dairy cows that have typically been used in feeding programs. Much more preferable is a more diverse and more natural food supply that does not demand constant administrative attention.

I294-31 (Cont.)

The multiple inherent problems with feeding programs are enough to disqualify them as providing effective mitigation for the loss of dispersed foraging habitat represented by the TMV development. More important, however, is the fact that feeding stations are in reality an obstacle to the long-term recovery of condors, whereas the dispersed foraging afforded by the present grazing and hunting regime on Tejon supports long-term recovery. Condor populations supported by feeding stations are, by definition, not self-sustaining, and to suggest feeding stations as a long-term alternative to the foraging currently afforded on Tejon clearly defeats the recovery purpose of the Endangered Species Act.

I294-32

We note that the most recent recovery plan for the condor (USFWS 1996) recognized a possibility that feeding stations might be necessary on a long-term basis (because of the threat of lead contamination in hunter-shot carcasses). However, this plan must now be recognized as obsolete on this subject, as it was written before alternative nonlead bullet ammunitions were well developed, before the negative effects of feeding stations on condor behavior were well understood, and before there were any expectations that banning lead ammunitions might prove politically viable. With the recent regulation changes regarding ammunitions in condor range made by the California Fish and Game Commission, the need for feeding stations can be expected to disappear from future planning documents and be replaced with policies favoring dispersed nonsubsidy food supplies. Thus, the MSHCP emphasis on feeding stations, and the loss of hunter-provided dispersed food supplies in the TMV planning area, are directly contrary to long-term conservation goals for the condor.

I294-33

In addition to underestimating impacts with respect to areas available for hunting and grazing, the MSHCP proposal also adopts a less than cautious viewpoint on other impacts. One important concern is that disturbances intrinsic to development of the TMV planning area may sufficiently reduce condor use in other adjacent areas, such as the proposed Condor Study Area, that they too become lost to use, even though they may appear to lie outside the directly impacted area. If the areas of greatest condor use on Tejon are greatly modified (by disturbance and the removal of food supplies) or become a source of obvious disturbance to condors (through increased traffic, construction, recreation, noise, etc.), overall use of the entire Tejon Ranch by condors may be greatly reduced.

I294-34

The MSHCP does not specify how much additional human use (either by residents or by the public at large) of non-TMV areas will be created by TMV

I294-35

development, stating only that use will be carefully regulated. Unfortunately, the multiple negative impacts represented by greatly increased numbers of people in TMV areas cannot be expected to be confined to the immediate surroundings of TMV residence areas, and effective regulation of the many activities of residents poses inherent difficulties. The ranch, for example, will be faced with demands for recreational use of surrounding undeveloped lands once development takes place and may well find it impractical to regulate such use effectively. Once residents are scattered throughout the region, controlling what they do at all times becomes highly problematic and indeed efforts at control may well be perceived as oppressive and may be widely ignored by residents. The highly dispersed and strung-out nature of proposed housing development of TMV guarantees (1) a maximum of environmental impacts relating to edge effects of developed areas and (2) maximum difficulty in regulating such effects. Such effects are not recognized in the MSHCP and DEIS, but can be appreciated from Figure 15 of our Appendix 2.

I294-35 (Cont.)

In addition, we note that the Tejon Ranch has always constituted a geographic bottleneck in the movements of condors among various important portions of its range, as can be seen in the map of condor range in our Appendix 2, figure 1. Essentially all birds commuting between the southern Sierras, the Sespe Sanctuary, and western regions of importance, such as the Bitter Creek NWR and nesting areas in Santa Barbara county have to funnel through the Tejon Ranch because of the unsuitability of other routes of travel due to deficiencies in wind conditions and topographic relief. The birds have clearly avoided flying across the San Joaquin Valley itself and have characteristically moved through Tejon to travel to and from the most heavily-used regions within condor range, including Tejon itself.

I294-36

The extent to which condor use of traditional foraging areas in the Sierra Nevada north of Tejon Ranch (including three Critical Habitat areas) may depend on some sort of "stepping stone" use of Tejon itself is not surely known, but if Tejon should for any reason be lost as an important foraging area, it seems plausible that the increased fragmentation of remaining foraging areas may prevent birds from southern portions of the range from developing or maintaining foraging traditions involving more northerly regions – the travel distances between remaining viable foraging areas may simply become too great. In the release program so far, no sustained use of these northerly areas has yet developed, suggesting some difficulties in achieving this aspect of recovery even without loss of Tejon Ranch as a foraging zone. If Tejon becomes lost as a major foraging area, this goal of recovery may well become much more difficult. Thus, for birds released in southern portions of the historic range, degrading Tejon Critical Habitat poses a risk of eliminating or interfering with use of three other portions of Condor Critical Habitat (Blue Ridge, Kern County Rangelands, and Tulare County Rangelands) by a recovering population, and preventing occupancy of the full range known for the historic population of the 1980s. Likewise, any birds potentially released in the future in nesting areas of the southern Sierra Nevada

I294-37

may never develop movements to areas of Critical Habitat south and west of the Tejon Ranch. I294-37 (Cont.)

We have earlier noted that the MSHCP unrealistically minimizes the importance of Tejon for condor foraging. It also unrealistically minimizes the importance of Tejon for condor movements. Specifically, the map shown of condor range in Figure 1 of Appendix C of the MSHCP (also given on page 66 of Section 4) is extraordinarily inaccurate in the region of Tejon and shows huge areas of the San Joaquin Valley up to Bakersfield and beyond as part of condor range and presumably available for condor movements, thus diminishing the relative importance of Tejon itself as a travel conduit for condors. The map given in our Appendix 2 (Figure 1), as prepared by Cogan, is very similar to the map in the Recovery Plan and shows condor range much more accurately. In text, the MSHCP recognizes that condors have not used the floor of the San Joaquin Valley to any significant extent (MSHCP page 4-9) but the maps provided in the same plan contradict the text. In reality, condors moving between use areas in the Sierras and the Sespe and other southern areas have always been effectively obligated to pass through Tejon, and they have never been well documented using much of the valley area presented in the MSHCP as condor range. I294-38

C. Inadequacy of Proposed Mitigation Measures

The MSHCP proposes that the direct impacts of development of TMV might be successfully mitigated by offering the birds a continuing feeding program in some other location. There are several objections to this suggestion, as discussed in preceding sections. Two of these are especially important. First, because it presumes a potentially perpetual food subsidy program, this suggestion implies continued negative behavioral pressures on the condor population and precludes the development of a fully recovered population involving free-living birds foraging for dispersed unpredictable carcasses and otherwise behaving in as natural a way as possible. A population maintained on subsidy is effectively an "outdoor zoo" population that is neither necessary nor desirable. Second it presumes a perpetual and very expensive obligation to maintain a food subsidy program. All human institutions are subject to problems in maintaining administrative continuity in the long term, yet no lapses in providing a food supply for birds would be tolerable for a population dependent on subsidy. I294-39

Also proposed as mitigation has been the use of lead-free ammunition for hunting on the ranch. Use of lead-free ammunition is now accepted as an essential component of condor conservation, but compliance with lead-free ammunition is now state law in condor range, so it does not qualify as a mitigation action taken by the ranch that might balance the negative aspects of development. I294-40

Other mitigation measures proposed, including maintenance of habitat quality in areas outside TMV through various means, avoidance of development of above- I294-41

ground towers or power or phone lines, measures to reduce micro-trash buildup in areas accessible to condors, and maintenance of grazing and hunting practices in non TMV lands are either practices already in place under pre-existing management practices or are efforts to minimize new negative impacts. As such, they cannot be invoked to imply an improvement of the situation for condors. They simply represent an effort to maintain the status quo. Yet these efforts will probably fail to maintain even the status quo in many respects (e.g., hunting and grazing will presumably be greatly reduced, if not abolished in TMV, and an increase in microtrash of some extent probably cannot be avoided). The benefits of establishing a permanent condor biologist position on the ranch are highly speculative and cannot be expected to begin to compensate for the negative aspects of development.

I294-41 (Cont.)

The MSHCP makes much of the willingness of the ranch to modify its first proposal on TMV and forego some of the development on Geghus Ridge. This hardly qualifies as meaningful mitigation, as it only reduces the area of residential TMV development by 2,385 acres (compared with the more than 19,000 acres still in the proposal). While Geghus Ridge is indeed a place of importance to condors, location data in our Appendix 2 indicate that most portions of TMV within Critical Habitat also have importance to condors, and in our own experience, for example, condor feeding events on Tejon have hardly been limited to ridgetops, or to open grassy locations for that matter, making the habitat acreage analyses offered in the proposal unpersuasive. While condors may be most commonly observed feeding in open grassy areas (perhaps in substantial part because they are most visible from a distance in such locations), we have also seen them feeding in forested portions of the ranch under the canopy of trees on multiple occasions (in particular, in portions of the TMV erroneously not considered important to condors in the MSHCP).

I294-42

Thus the statement on Page 4-6 of the MSHCP that condors require "fairly open spaces" for feeding is simply incorrect, and as a result the entire Habitat Suitability methodology presented on page D-17 of Appendix D of the MSHCP lacks plausibility.

I294-43

In sum, the proposed mitigation measures in the MSHCP fail to provide adequate compensation for the many negative impacts of the plan on condors. Potentially, the only way the negative aspects of TMV development on condors can be successfully mitigated is either to drop these development plans altogether or to change the sites of developments to a region (or regions) that lies outside Condor Critical Habitat and receives no significant use by condors. The Tejon Ranch has many lands that lie outside Condor Critical Habitat and that have not received significant condor use historically. Development of these lands presumably would not impact the condor significantly, at least in a direct sense, although there may well be other environmental reasons not to develop some of these lands. In any event, no compelling arguments have been presented for why any Critical Habitat lands must be developed.

I294-44

Approval of the MSHCP for Tejon Ranch would set a most unfortunate precedent for disregarding Critical Habitat protection not only for the condor, but for all other endangered species, based in essence on nothing more than unpersuasive claims that (1) substantial residential development of Critical Habitat will have no adverse impacts on the condor or may even be beneficial for the species, (2) maintenance of the status quo in major management policies of other Critical Habitat lands or tolerating limited degradation of major management policies of these lands might somehow qualify as mitigation for negative impacts of proposed development, and (3) major negative impacts of development can be mitigated by initiation of other ultimately negative impacts (feeding programs). All these arguments are defective, and we emphasize instead that development of lands for urban or suburban purposes has never proved compatible with condor conservation in the past, and is highly unlikely to prove compatible in the future.

I294-45

D. Some General Remarks on the DEIS

It is surprising to see that the alternatives to proposed MSHCP development considered in the DEIS do not include a real "no action" alternative. All are development proposals of one sort or another, including the alternative labeled "No Action/ No MSHCP." Yet surely for an area including critical habitat for an endangered species, one of the alternatives considered should be one of continuing management policies of the past that have proved beneficial for the species in question without making risky changes in management procedures. In the case of Tejon, a real "No Action" alternative that involves no residential or commercial development in Critical Habitat and a continuation of grazing and hunting practices, without increased recreational development would come close to maximizing benefits for the species and is a real alternative. The fact that no such alternative is considered and that an alternative involving substantial development is labeled "No Action" invalidates the entire exercise. Tejon Ranch is under no obligation to develop its lands, nor is the federal government under any obligation to assume that the only alternatives to MSHCP development are other kinds of development. Failure to consider a real "No Action" alternative is inconsistent with the requirements of the policies implementing NEPA.

I294-46

The present DEIS is too badly flawed, legally and scientifically, to permit careful scrutiny of the impacts of proposed action – the purpose of an environmental impact analysis. The same scientific limitations are present in the MSHCP. Condors are the final arbiters of what areas are important to them, and they have spoken clearly. Their present use of Tejon, especially the areas proposed for development in TMV, despite the fact that no releases have been conducted anywhere nearby, provides compelling evidence for the enduring importance of these areas to the species, and a presumption must be recognized that substantial development of high use areas in Critical Habitat poses significant and unacceptable impacts on recovery of the species, as condors have never

I294-47

demonstrated long-term use of urban and suburban areas. The materials presented in the MSHCP and DEIS do nothing to dispel that presumption. The analyses provided of habitat use are based on faulty assumptions, major negative impacts are unaddressed in these documents, and the mitigation actions proposed are inadequate to compensate for reasonably anticipated impacts. In part, the mitigation actions proposed offer long-term negative influences of their own that are incompatible with full recovery of the species.

I294-47 (Cont.)

In our considered judgment, we find the proposed Tehachapi Upland Multi-species Habitat Conservation Plan to be incompatible with recovery of the California Condor and to represent significant adverse modification to Critical Habitat for the species.

I294-48

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I294-49

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Fred C. Sibley – former field leader of condor research program for USFWS (1966-1969); author of *Effects of the Sespe Creek Project on the California Condor* (1969).

Dr. Noel F.R. Snyder – former field leader of condor research program for USFWS (1980-1986); former member of Condor Recovery Team (1980-1986); senior author of *The California Condor, a saga of natural history and conservation* (2000); senior author of *Introduction to the California Condor* (2005); recipient of William Brewster Award of American Ornithologists' Union for research and conservation work with the California Condor and Puerto Rican Parrot, 1989.

William D. Toone – Condor Recovery Team member (1986-1992); Curator of Birds, Zoological Society of San Diego (1983-1993); Director of Applied Conservation, Zoological Society of San Diego (1993-2003); Founding trustee and Executive Director of the ECOLIFE foundation (2003-present).

Appendix 1: Sample Statements of the U.S. Fish and Wildlife Service and the California Department of Fish and Game on the Importance of Critical Habitat for Condors on Tejon Ranch.

It is the opinion of the recovery team that the condor's survival would be severely jeopardized by any major change in the use and/or management of the core portion of the Tejon Ranch (U.S. Fish and Wildlife Service 1979). 294-51

The condor will not survive without Tejon (in litt., U.S. Fish and Wildlife Service, November 10, 1971. 294-52

...the ranch is one of the most important links in the preservation of this endangered species (in litt., California Department of Fish and Game, May 21, 1979). 294-53

[Tejon Ranch] ... *is essential to condor survival and without it value of the Sespe area would be questionable* (U.S. Fish and Wildlife Service 1972). 294-54

The future of the California condor could hinge on maintaining the Tejon Ranch habitat (U.S. Fish and Wildlife Service 1972). 294-55

It would be disastrous to have any major new developments very far inside the red line [central portion of the Tehachapi Mountains] (in litt., U.S. Fish and Wildlife Service, June 7, 1979). 294-56

I am mainly concerned about permanent or long term disturbances, or major changes in the level of human activities. Homesites or ongoing mining activities, for example, I feel would be incompatible with proper condor management (in litt., U.S. Fish and Wildlife Service, June 7, 1979). 294-57

Appendix 2 – Condor Location data assembled by Cogan

H294-58

Appendix 2

California Condor Activity in the Tejon Ranch Region

A summary of California condor habitat use patterns in conjunction with designated critical habitat and proposed developments on Tejon Ranch, CA

Christopher B. Cogan, PhD
12 June 2009

A CENTER for BIOLOGICAL DIVERSITY REPORT

I294-58
(Cont.)

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Published by the Center for Biological Diversity
12 June 2009

Front Cover:
Adult condor "AC-6" on Tejon Ranch
Photograph by Christopher B. Cogan, 18 March 1986

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www.BiologicalDiversity.org

The Center for Biological Diversity is a national nonprofit conservation organization with more than 200,000 members and online activists dedicated to protecting endangered species and wild places. We work through science, law, and creative media to secure a future for all species, great or small, hovering on the brink of extinction.

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I294-58
(Cont.)

Introduction

To determine the significance of the Tejon Ranch as habitat for California condors, this report combines and analyzes all available condor data from multiple datasets over the period from the late 1800's to the present. Data sources include:

Visual condor sightings from the McBee records: 1890 – 1984
Visual condor sightings from USFWS and Audubon researchers: 1982 – 1987
Visual flightlines from USFWS/Audubon pilots: 1982 – 1987
Condor Nest location records. 111 records from pre-1900 – 1986

USFWS (Ventana):
- CACO_VWS_GPSDATA_1-65535.xls
- CACO_VWS_GPSDATA_65536-77250.xls
- 붐 VentGPS03_06_Merge
- 붐 77,250 records (Only includes: Date, Time, Lat, Lon. Condor ID's were not provided) from 17 July 2003 – 3 June 2006

USFWS non-visual point locations from Satellite radio transmitters (select Fix = 3)
- XY_MergeFix3_WGS84
- 29,595 records from: Dec 23, 2001 – June 17, 2008

USFWS non-visual point locations from Satellite radio transmitters
- XYSatelliteDataTable
- 3,923 records from: 1 Jan 2007 – 19 June 2008

USFWS non-visual GPS tag point data:
- XYGPSDataTable
- 37,521 records from 1 Jan 2007 – 19 June 2008

USFWS non-visual GPS tag point data:
- XYGPSDataTable
- 38,405 records from 1 May 2008 – 31 Dec 2008

World Wildlife Fund terrestrial ecoregions
Tejon Ranch proposed development boundaries from the Center for Biological Diversity (CBD)
Tejon Ranch property boundaries (from CBD)
Condor ESA critical habitat designation from http://criticalhabitat.fws.gov/ (10 polygons).

I294-58 (Cont.)

Spatial Analysis of Tejon Ranch as California Condor Habitat

A series of 15 geographic information system (GIS) maps (Figures 1-15 below) summarize and illustrate the various types of condor activity in the Tejon Ranch area. Each of these map figures are presented in color. Black and white copies of this report will not provide sufficient information.

Figure 1. Locator Map. Historic California condor range, ESA designated critical habitat zones, Tejon Ranch property, and proposed Tejon Ranch development area.

This map identifies the position of Tejon Ranch and the Tejon Ranch proposed development areas within the historic condor range. The condor range boundaries were drafted in consultation with USFWS and National Audubon condor biologists in the 1980's providing a generalized outline of condor habitat areas. Of particular interest is the Tejon Ranch location at a four-fold ecoregion "choke point" between the transverse range and the Sierra Nevada Mountains.

Figure 2. WWF Ecoregions. The original condor range map from Figure 1 was drafted as a general consensus by condor researchers. Figure 2 brings in an independent data set, the World Wildlife Fund for Nature terrestrial ecoregions (see also Hickman 1993, for the Jepson ecoregion version). Condors tend (with some exceptions) to avoid the California Central Valley and the Mojave Desert. This map provides further explanation for the constriction of the condor range in the Tejon Area, and highlights the uniqueness and importance of the region.

Another habitat property illustrated in Figure 2 is the division of the Tejon Ranch Proposed Development area into four major ecoregions, in particular the California interior chaparral and woodlands vs. the California montane chaparral and woodland types (yellow and purple in the map). Following general ecological principles, any consideration of habitat impacts or endangered species impact needs to treat each ecoregion separately. This is particularly important when considering how condors use habitats in multiple ecoregions and how a species such as the condor can act as an umbrella species.

Figure 3. McBee Records. The historic McBee records reflect visual condor sightings, with a total of 7,341 records included in the data base. The records run from 1890 until 1984. Approximately 1,342 sightings are from the Tejon Ranch area, with records from the 1930's through 1984. These Tejon area data include 1178 Airborne records, 102 perched records, and 51 feeding records. The McBee data are an important record of past condor habitat. What is particularly striking is the consistency of condor use in this area from our earliest records through present times. Recent condor captures, releases, or feeding programs have not significantly attracted nor deterred condors from the Tejon Ranch area. Pastoria Creek and Winters Ridge are prime examples of long-standing condor habitat areas.

I294-58 (Cont.)

Figure 4. Visual Records. The visual sighting data represented in Figure 4 are based on data collected by field researchers. From 1982 through 1987 there were 10,294 records collected, with approximately 1,800 in the Tejon Ranch area. Corresponding condor ID's (CID) include 11 individuals (0, 1, 2, 3, 4, 5, 6, 7, 8, 9, and 97). CID code 97 indicates "unknown adult condor". Note how the spatial patterns of habitat use are consistent with the earlier McBee records.

Figure 5. Flight Lines. From the period 1982 – 1986 condor biologists in light aircraft used radio telemetry to locate tagged condors, then observe the birds visually and follow them in flight. While flying, the pilots drafted their course on county-scale maps, which were later digitized and compiled in GIS format. The flight data are unique, because they provide a consistent visual record of bird movements over large areas for a five-year period. Though the wild population was very small in these years, the Tejon area data include records from six individual birds (condor ID's 1, 2, 5, 6, 8, and 9). Please note that these data are intended as a general indication of flight routes, not as spatially precise as other data types such as the GPS data. In spite of the spatially coarse nature of the maps, the flight data add yet another important form of evidence identifying Tejon Ranch as critical condor habitat.

Figure 6. GPS Records. The GPS satellite telemetry data on condor locations represents a true breakthrough in data collection technology. The massive data volumes and quality of data offer critical insights to condor habitat use. The GPS locations plotted in figure 6 are from three USFWS data sets:

1) GPS data collected from 17 July 2003 – 3 June 2006 77,250 records with approximately 400 in the Tejon Ranch area. Approximately 80% of the records from this data set were located in the Ventana / Pinnacles region. Condor ID's were not provided with this data so a summary of the number of individual birds in the Tejon area is not presented here.
2) GPS data collected from 1 January 2007 – 19 June 2008 37,521 records, with approximately 1,300 in the Tejon Ranch area. All of the 17 birds from this data set have recorded locations in the Tejon area.
3) GPS data collected from 1 May 2008 – 31 Dec 2008 38,405 records, with approximately 1,500 in the Tejon Ranch area. Of the 17 birds represented in this data set, 14 have recorded locations in the Tejon area.

Of particular note with all of the Figure 6 records is the spatial correlation of the high accuracy GPS data with the older visual data sets, including the flight line data.

Figure 7. Pastoria Creek Map. Figure 7 is an enlargement of Figure 6, providing detail for key condor activity areas along Bear Trap Canyon and Pastoria Creek within the Tejon Ranch, and specifically within the proposed "Tejon Mountain Village" development area.

I294-58 (Cont.)

Figure 8. Perched Activity. To determine different types of condor activity within the Tejon Ranch area, the 1982 – 1987 visual data (10,294 records) were reduced to show perched activity only (2,901 records). These data included approximately 600 records in the Tejon Ranch area. Many of the perched records occur in the upland areas above Bear Trap and Tunis Creeks, and in the Winters Ridge area.

Figure 9. Feeding Activity. Of the 1982 – 1987 visual data records, 777 were coded as feeding records. This figure includes approximately 200 records of feeding condors within Tejon Ranch. Note how most of the feeding locations are well apart from the 5 kilometer buffers around nest locations. Also note how the flight lines that pass over the proposed development areas identify critical habitat which acts to connect the feeding areas with nesting areas. Based on the ecoregion patterns in Figure 2, this figure highlights multiple activities (nesting, flying, and feeding) within the California montane chaparral and woodland ecoregion. This figure also suggests how impacts in the Tejon area could also impact (for example) nesting areas 40 km to the south.

I294-58 (Cont.)

Figures 10 – 12. Perspective views of selected condor data within the proposed Tejon Ranch development areas. Please see figure legends for more information.

Figure 13. Koford Map. Historic 1953 map from Carl Koford with transition routes from Ventura to Tejon.

Figure 14. GPS-measured Condor Positions with ½ mile buffer. See figure legend for additional description and discussion.

Figure 15. Proposed Tejon Ranch development areas with 400 meter (1/2 mile, shown in blue) and 800 meter (1 mile, in green) buffer extensions. See figure legend for additional description and discussion.

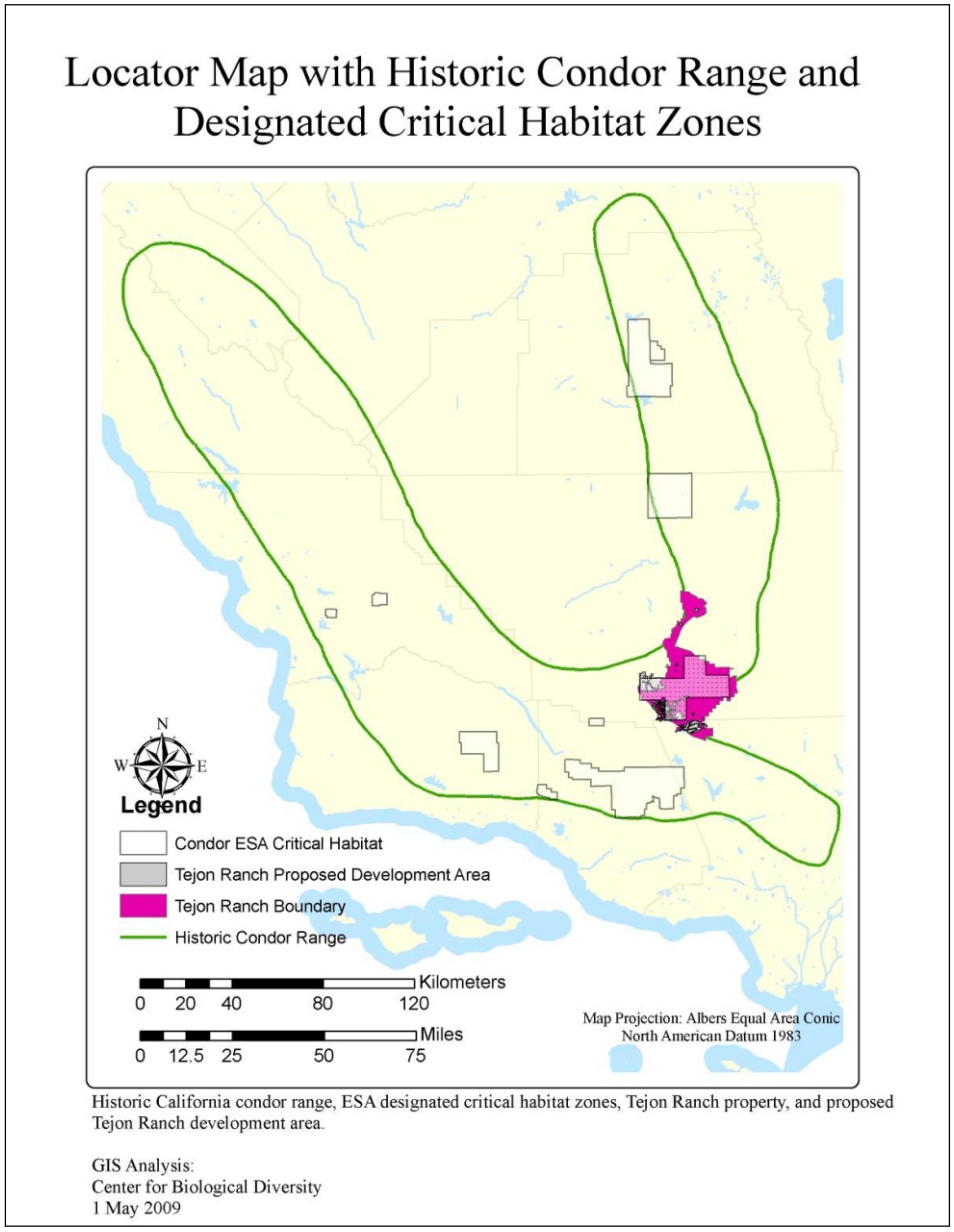
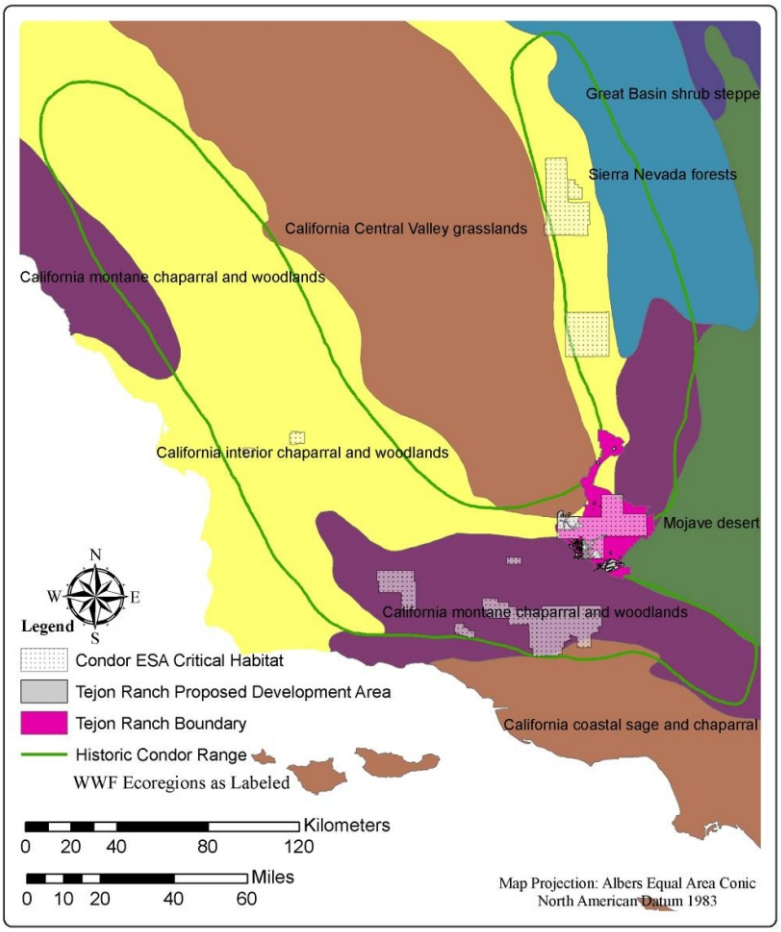


Figure 1. Locator.

I294-58
(Cont.)

Locator Map with World Wildlife Fund Terrestrial Ecoregions and Proposed Tejon Ranch Development Zones



Historic California condor range with proposed Tejon Ranch development area and World Wildlife Fund terrestrial ecoregions.

GIS Analysis:
Center for Biological Diversity, 1 May 2009

Figure 2. WWF.

I294-58 (Cont.)

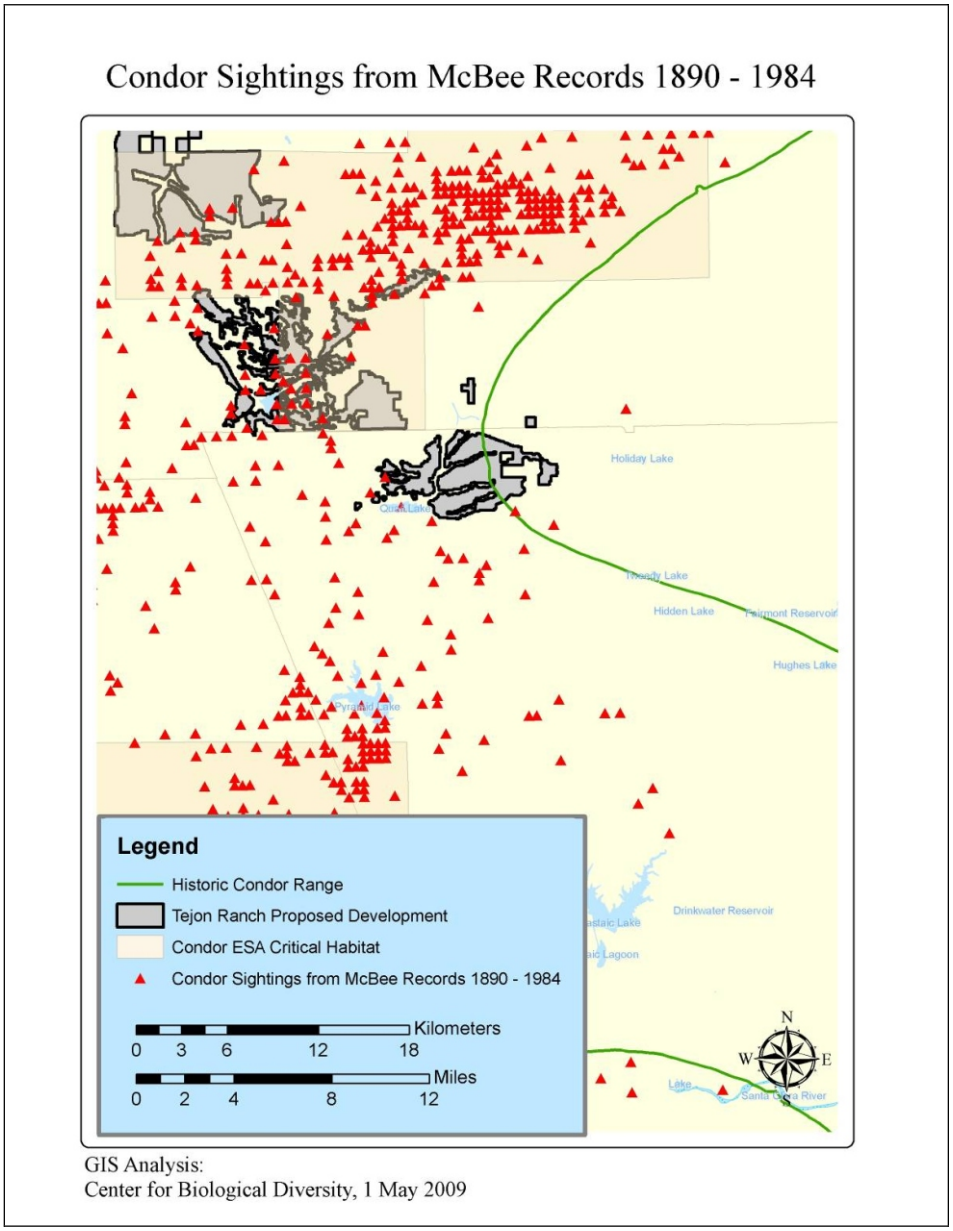


Figure 3. McBee.

I294-58 (Cont.)

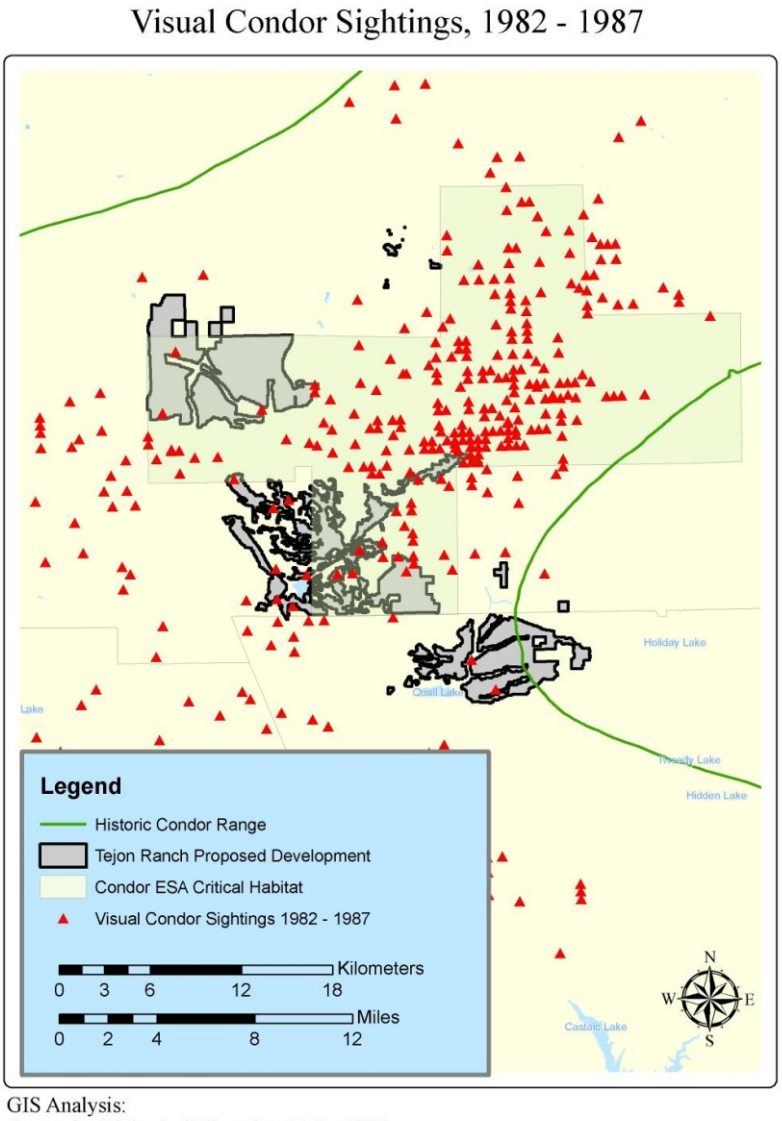


Figure 4. Visual.

I294-58
(Cont.)

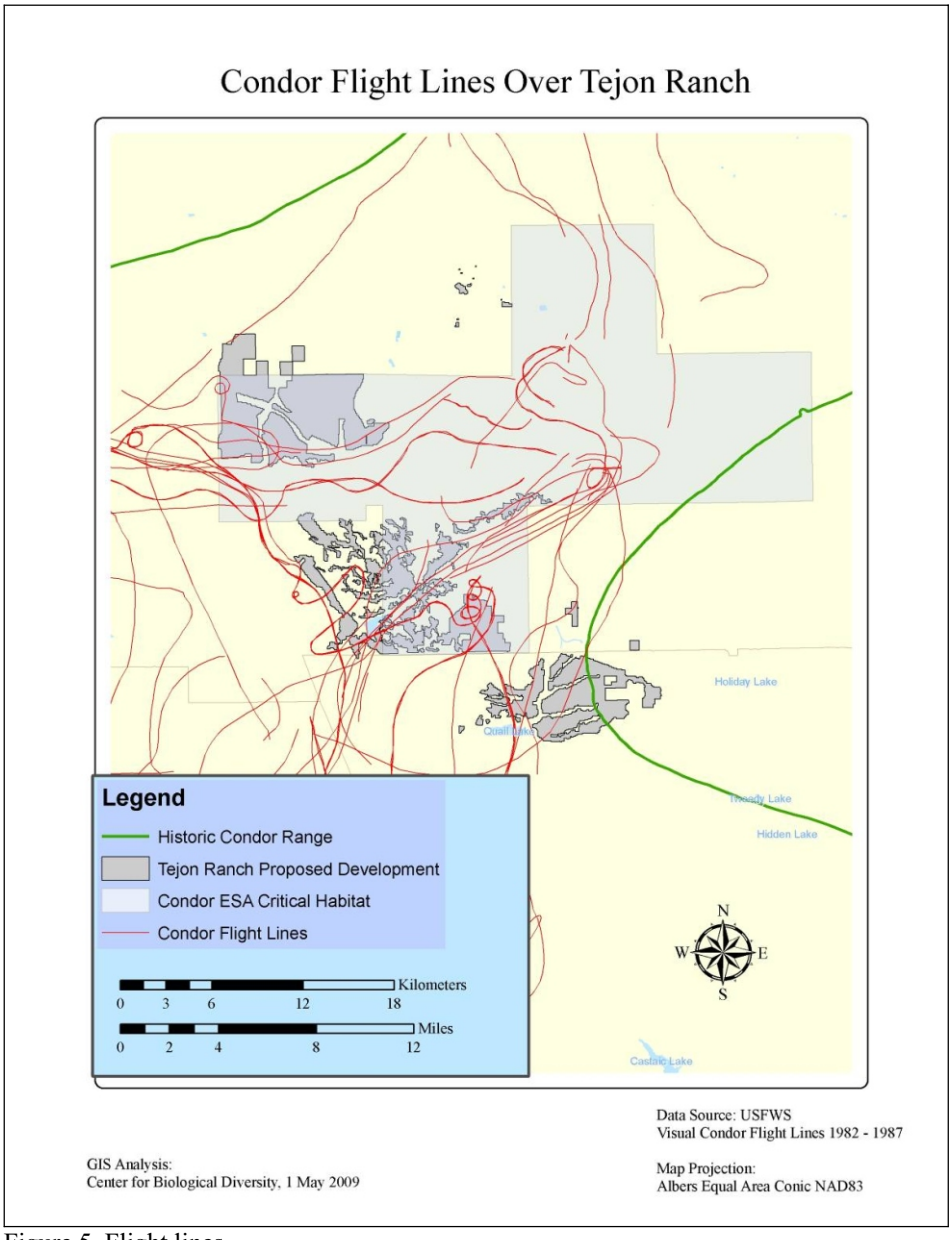


Figure 5. Flight lines.

I294-58
(Cont.)

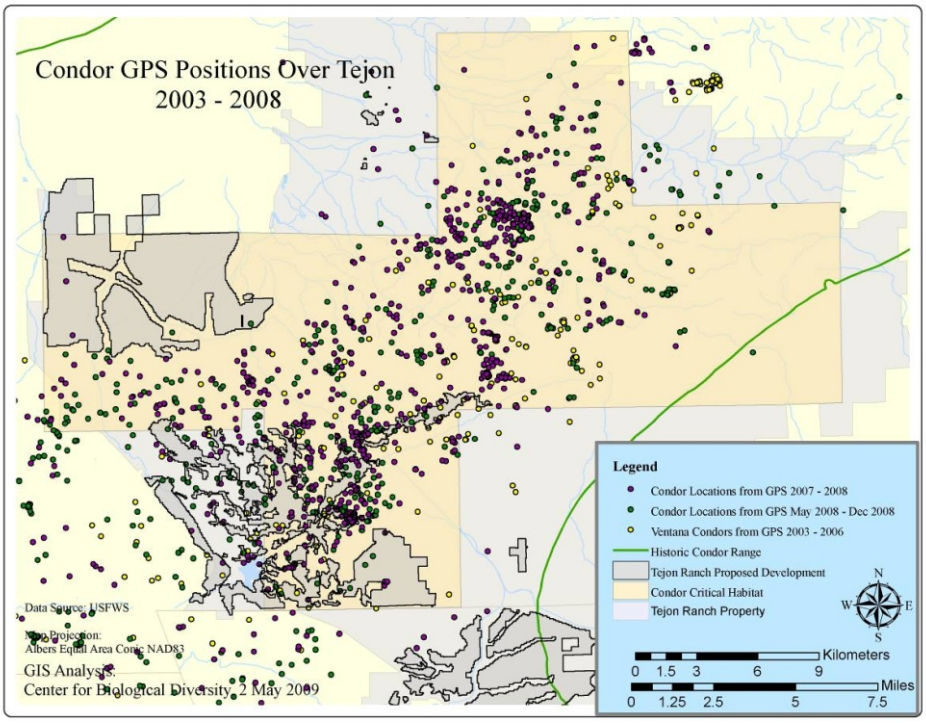


Figure 6. GPS.

I294-58
(Cont.)

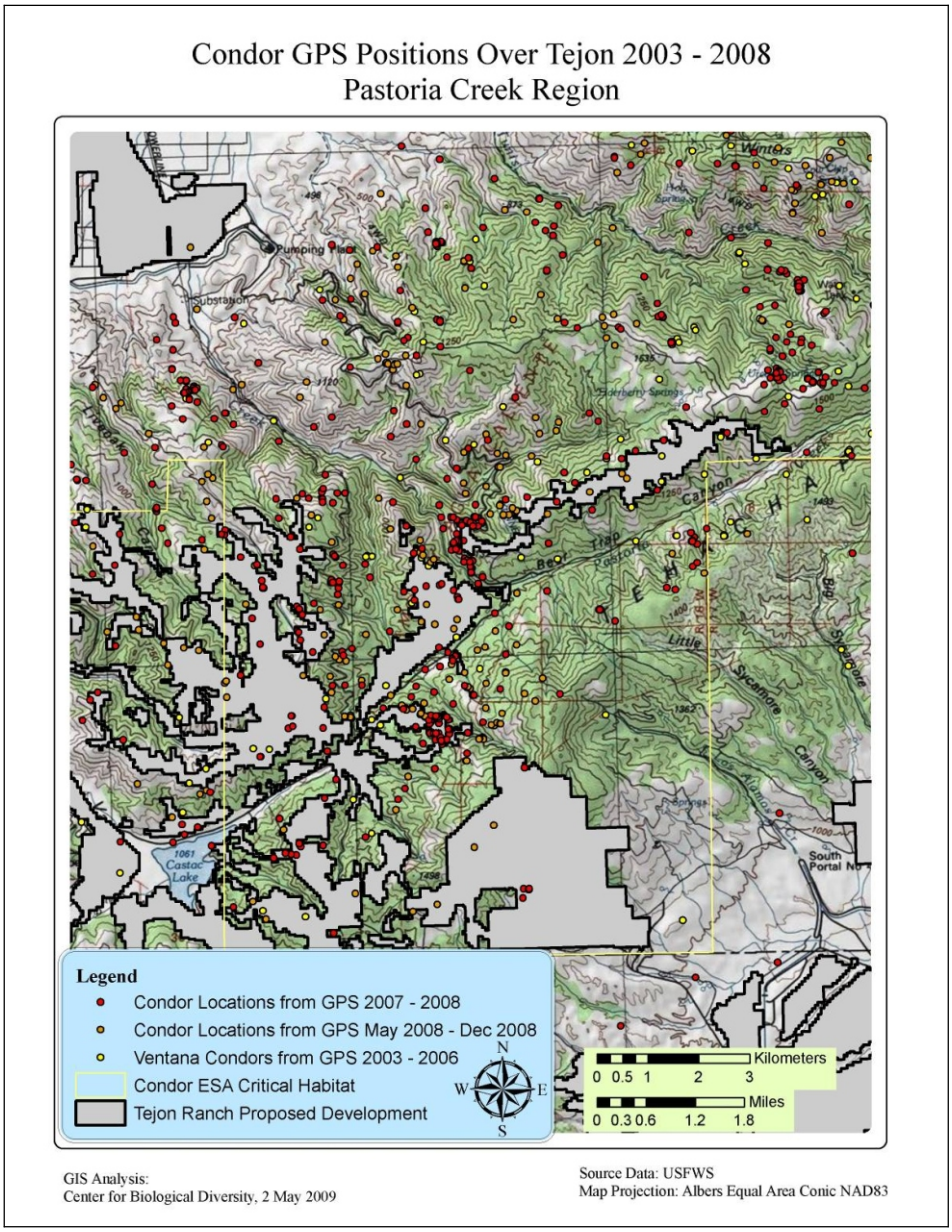


Figure 7. Pastoria Creek.

I294-58
(Cont.)

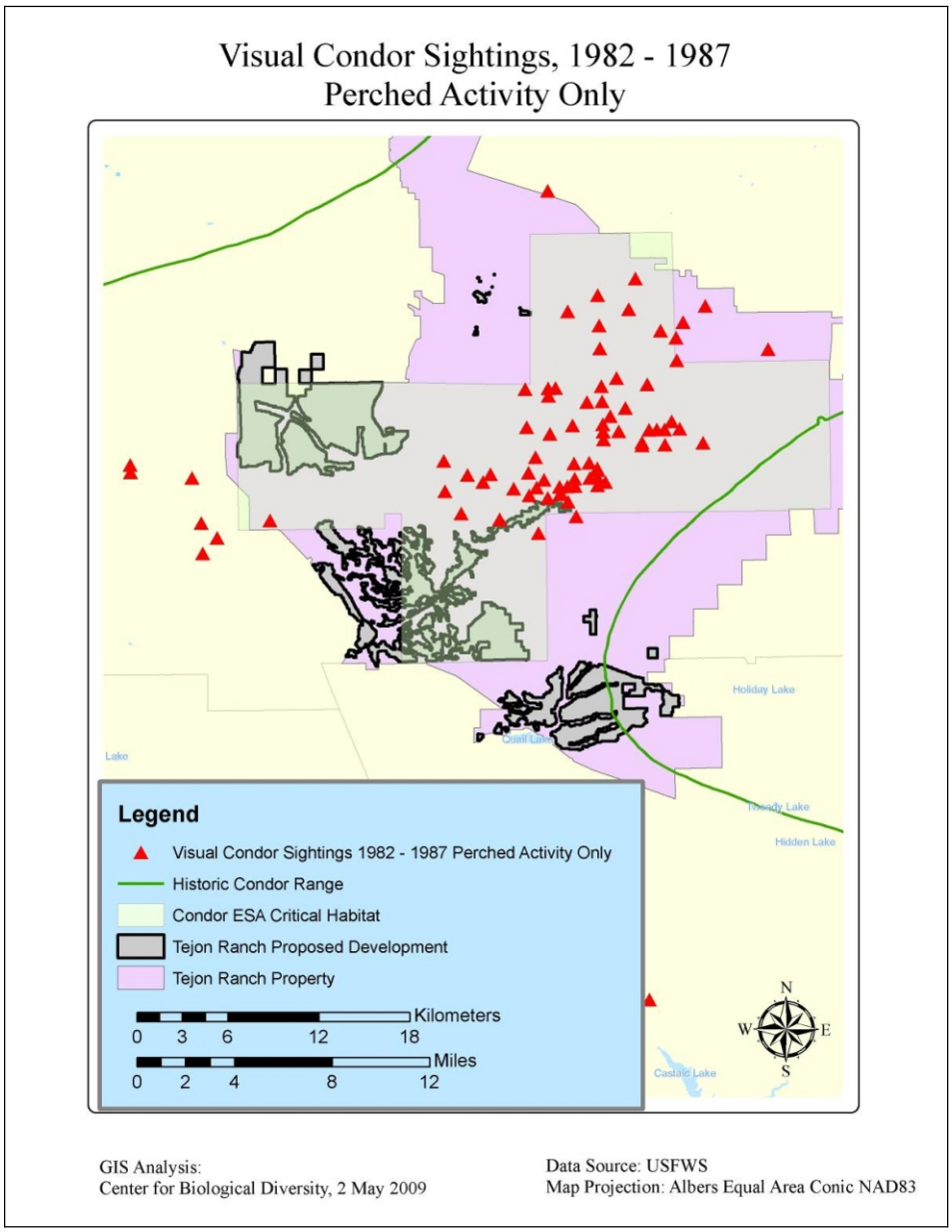


Figure 8. Perched.

I294-58
(Cont.)

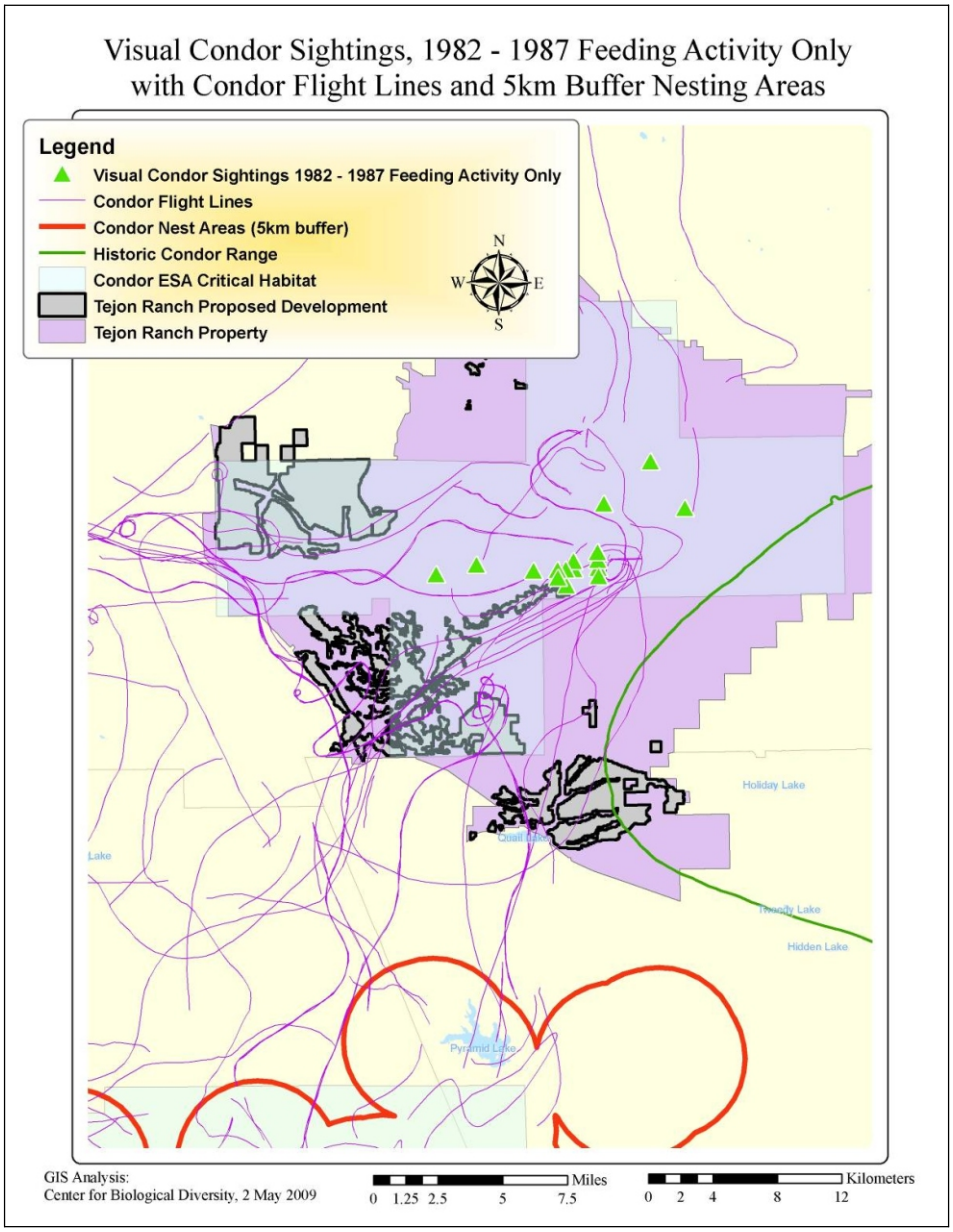


Figure 9. Feeding.

I294-58
(Cont.)

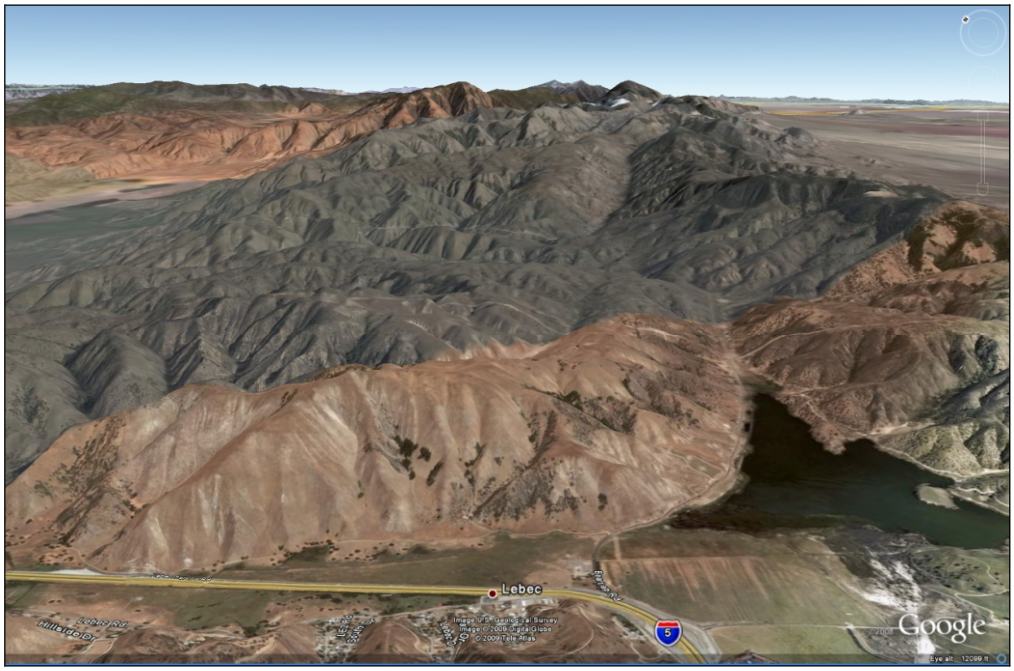
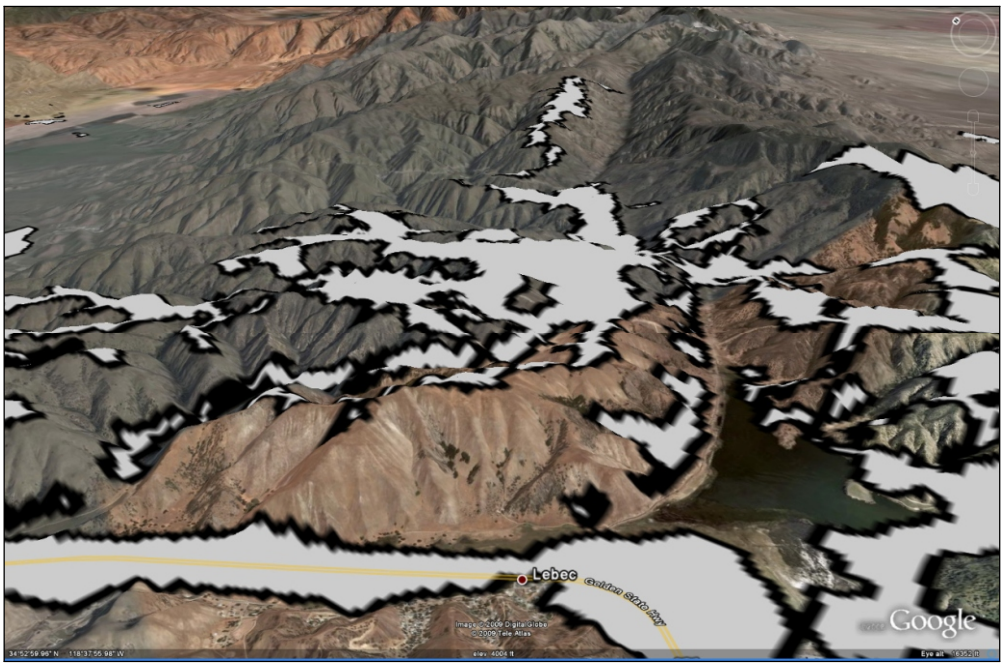


Figure 10. Perspective view looking north-east up Bear Trap Canyon from Castac Lake and Lebec.

I294-58 (Cont.)



I294-58
(Cont.)

Figure 11. Perspective view looking north-east up Bear Trap Canyon from Castac Lake and Lebec with proposed Tejon Developments indicated by the grey overlay. From this perspective, the combined proposals for the "Grapevine Development", the "Tejon Mountain Village", and the "Centennial Development" present a significant intrusion and connectivity barrier to this habitat area and transition zone flyway.

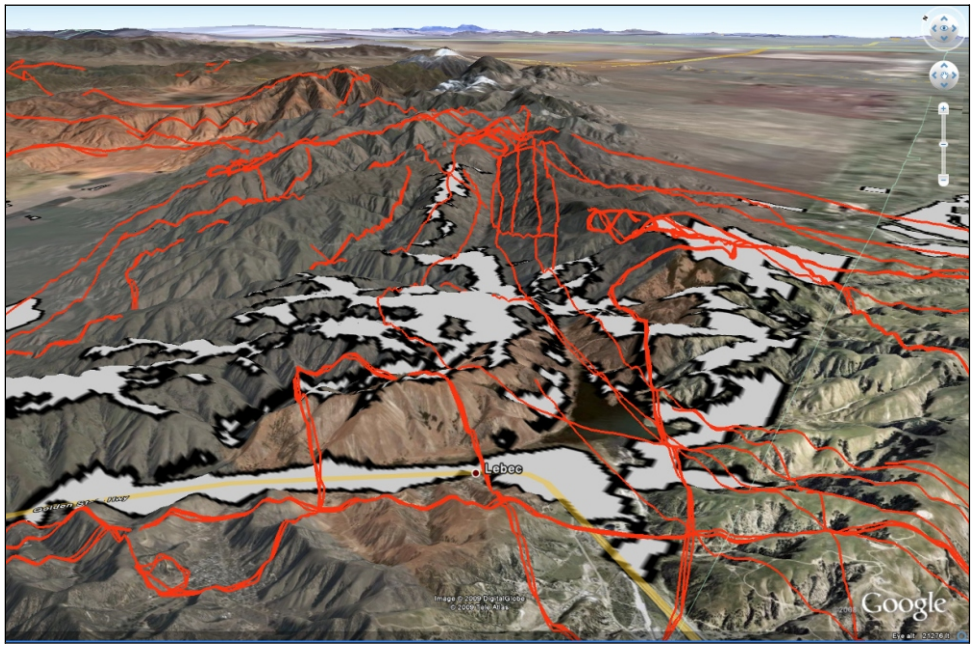


Figure 12. Perspective view looking north-east up Bear Trap Canyon from Castac Lake and Lebec with proposed Tejon Developments in grey and condor flight lines in red. As noted in the accompanying text for Figure 5, the red flight lines are general indications of flight routes, not precise locations. More precise location data is represented in Figure 7, GPS positions over Tejon.

I294-58 (Cont.)

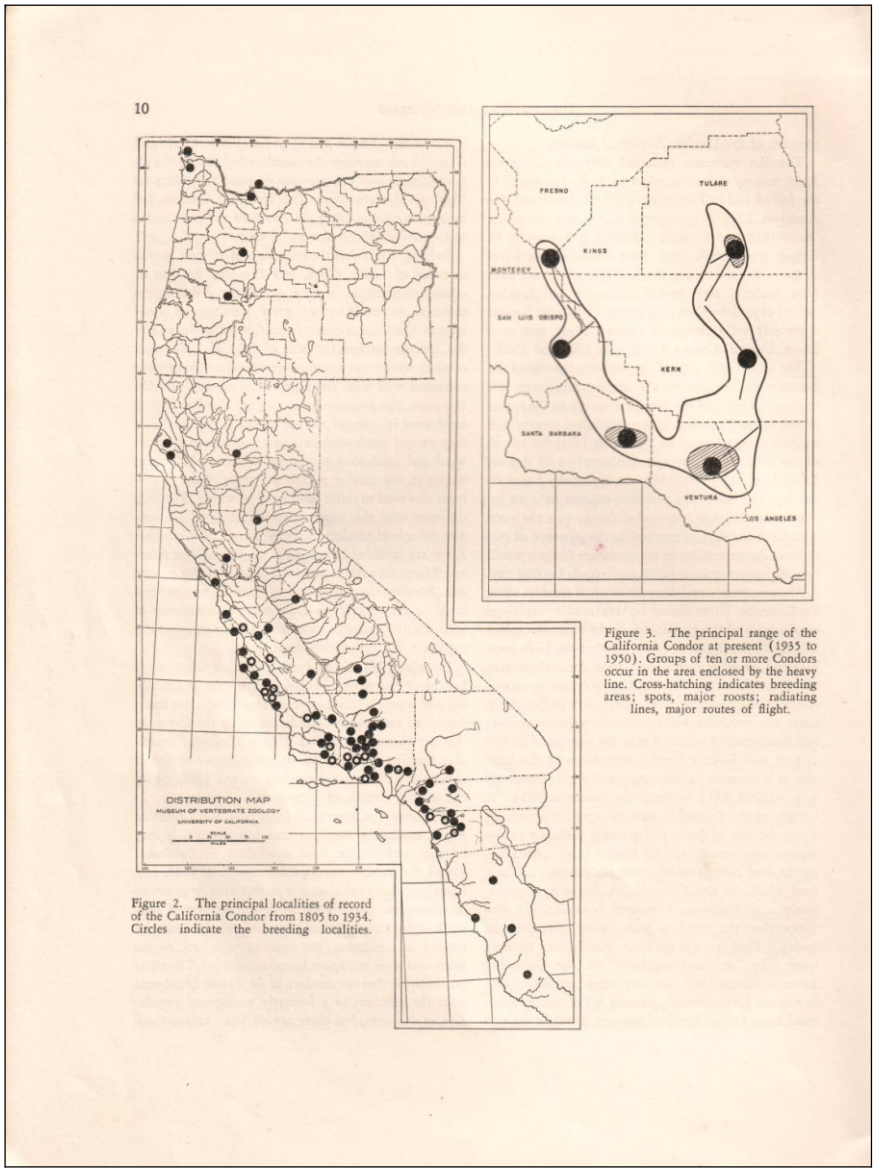


Figure 13. Condor map from Carl Koford's notes (1953, page 10). Note the general trend for flight lines to extend north-east from the Ventura nesting area to the Tejon feeding and roosting area shown in the inset map. The Tejon area flight patterns and habitat use is consistent with the flight line data (Figure 5) and the most recent GPS data (Figure 6).

I294-58 (Cont.)

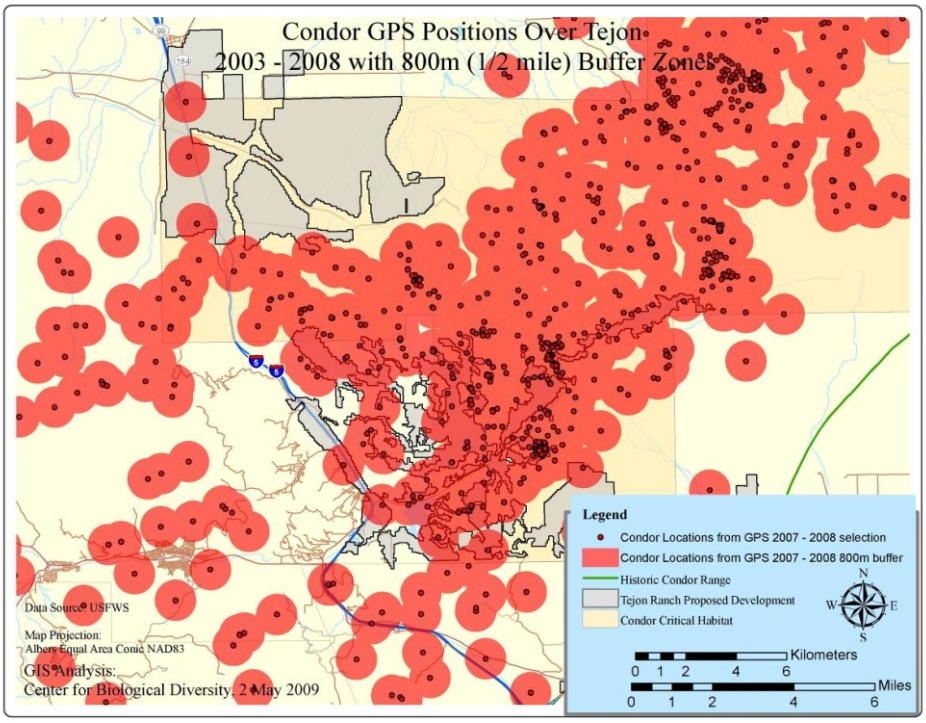


Figure 14. Condor Positions with ½ mile buffer. The high-accuracy GPS positions have been buffered with an 800 meter (1/2 mile) radius in this figure. There is longstanding precedence to protect nesting and other condor activity areas by areas ranging from 500 yards (0.28 miles) to 2.3 miles (see Text Box 1 for citations). While the exact buffer distances required in this case will require further study, the importance of the buffer concept is well documented.

I294-58 (Cont.)

Text Box 1. Human Disturbance and Protective Buffer Distances for California Condors as Recommended by Various Researchers and Agencies

Koford's statements on closures to protect nesting and roosting sites are found on pp 136-137 of his Audubon Research Report #4. 1953.
His most famous statement about the effects of disturbance by humans on nesting condors is found on p. 109.

"One man can keep a pair of condors from the egg all night or prevent the feeding of a chick for an entire day merely by exposing himself within 500 yards of a nest for a few minutes at one or two critical times of the day. Loud noises can alarm condors at distances of over one mile. Individuals or groups of persons moving about must keep at least one-half mile from condor nests in order to void disturbance of the parent birds."

Some of the documents relating to Forest Service closures in the Condor Information System:

00893CON
CARRIER, W.D. 1971.
HABITAT MANAGEMENT PLAN FOR THE CALIFORNIA CONDOR.
U.S. FOREST SERVICE, LOS PADRES NATIONAL FOREST, GOLETA, CALIFORNIA. 53 PP.
Procedures mentioned: Eliminate human activity within ½ mile of roosting and bathing sites.

01827CON
MULDOWNEY, B.K. 1977.
FOREST SERVICE PARTICIPATION IN SAVING THE CONDOR HABITAT.
IN: CALIFORNIA CONDOR--1977. P.P. SCHAEFFER AND S.M. EHLERS (EDS.). NATIONAL AUDUBON SOCIETY, TIBURON, CALIFORNIA. PP. 13-19.
Mentions closing or relocating 36 miles of trails or roads to protect condor habitat. No oil field activities within 1 ½ miles of a condor nest site. Mentions earlier ½ mile closure. Reports that was inadequate.

03080CON
U.S. FOREST SERVICE. 1976.
FOREST SERVICE ROAD USE REGULATIONS [CLOSING THE SLIDE MOUNTAIN ROAD TO ALL PUBLIC MOTOR VEHICLE TRAFFIC.]
DECLARATION NO. 53-1, DATED MARCH 25, 1976. 1 P.
One reason given for closure is "the necessity to protect Condor nesting sites from disturbance"

03083CON
U.S. FOREST SERVICE. 1977.
CONDOR SANCTUARY CLOSURES, LOS PADRES NATIONAL FOREST.

03101CON
U.S. FOREST SERVICE. 1980.
ORDER NO. 01-80-1. WILDLIFE HABITAT AREA CLOSURE. ANGELES NATIONAL FOREST [CONDOR NEST SITE].
SIGNED BY W.T. DRESSER, FOREST SUPERVISOR, ANGELES NATIONAL FOREST, AND DATED APRIL 6, 1980. PASADENA, CALIFORNIA. 2 PP.
This refers to the trail closure for the Red Rock nest site.

Sibley and Wilbur on Disturbance as found in:

03352CON
WILBUR, S.R. 1978.
CALIFORNIA CONDOR, 1966-76: A LOOK AT ITS PAST AND FUTURE.
N. AMER. FAUNA, NO. 72. U.S. FISH AND WILDLIFE SERVICE, WASHINGTON, D.C.136 PP.

Notes on disturbance by humans are found on pp. 34-39. Topics covered are: Flying condors; Roosting Birds; Feeding Birds; Nesting Condors.
Sibley's plotting of the location of active condor nest sites in relation to roads, trails and oil field activity and came up with (condensed) the following minimum distances:
0.8 miles from lightly used dirt roads; 1.2 miles from regularly used dirt roads; 2.2 miles from paved roads; 1.2 miles from oil wells shielded by sight and sound; 2.3 miles from oil wells in view.

I294-58
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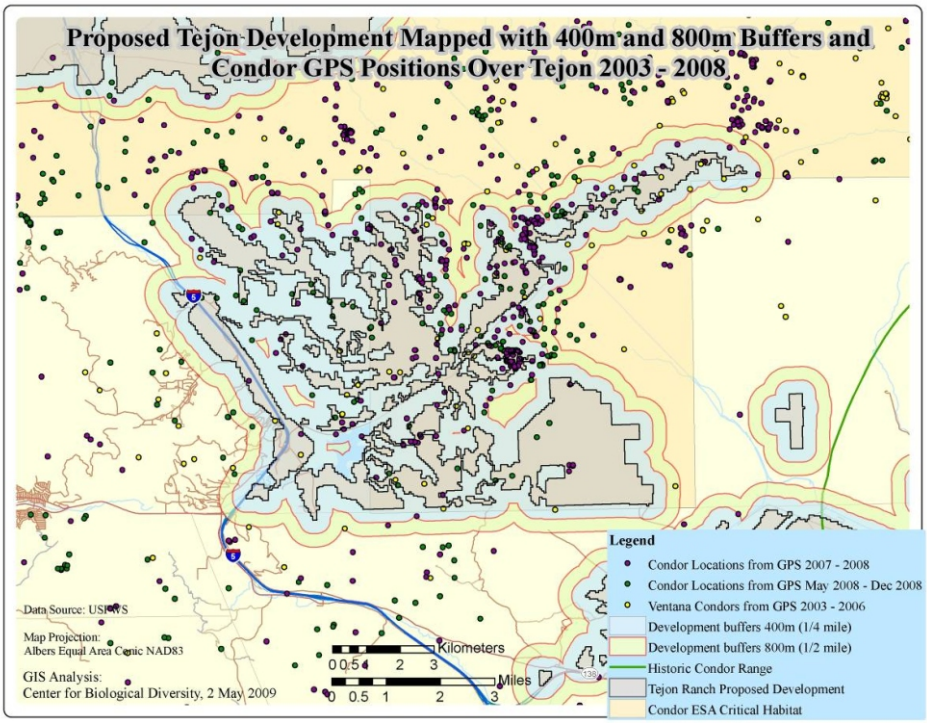

Figure 15. Proposed Tejon Ranch development areas with 400 meter (1/2 mile, shown in blue) and 800 meter (1 mile, in green) buffer extensions. The basic premise represented is the effect that a house and garden patch has a much larger ecological footprint than would be measured from the property lines alone.

Notes:

1) Far more of the condor ESA critical habitat is impacted when buffers are taken into account. The fragmented design of the proposed developments (i.e. linear areas with intermediate "open space") results in a deceivingly low impact when measured by area alone. In such cases, proposed development perimeter length may also be a good indicator of habitat impact.

2) The three proposed Tejon development areas begin to merge when buffers are taken into account, forming a more complete barrier across the WWF ecoregions, the transverse range, and the habitat corridor between nesting and feeding/roosting areas.

3) The number of conflicts between designated critical habitat and condor data points is increased when environmental buffers are taken into account. In this figure the condor data points are represented as simple points for visual clarity, however these points should also be buffered into circles (as in Figure 14) to more accurately quantify impacts associated with development in critical habitat.

I294-58
(Cont.)

Comment Letter I314

Conroylancaster@aol.com

01/26/2009 12:11 PM

To: fw8tumshcp@fws.gov
cc:
Subject: tejon eir

As a neighbor,hobby rancher,bordered with tejon ranch .I support their efforts to responsibly develop their resources, as they have openly submitted and accompanied with unpresedented outreach.with ten years of witness to this companys love of and respect for the land and contribution to support for ,mutch of it prior to development plans,neighboring communities ie. veterans cemetery land donation to support of local high school programs and an animal shelter in lebec ca.the list goes on and on.I firmly believe the management of trc represents the new relationship between development and neighbor respect in california's growing population.The beauty of the vista we all love will forever be a part of califonia's treasured grandure.The alternative to their proposal will be the breaking up of this land into an expansion of what we see in valencia to the south. respectfully Gerard Conroy

I314-1

Comment Letter I375

"Pam Devries" <pdevries@frazmtn.com>
05/02/2009 10:27 AM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Tehachapi Upland MSHCP/DEIS Comments

Gentlemen:
Please accept the attached letter (TUMSHCP_DEIS comments.pdf) as initial comments on the Tehachapi Upland Multi-Species Habitat Conservation Plan and Draft Environmental Impact Statement for the Plan.
Thank you,
Pam De Vries

TUMSHCP_DEIS comments.pdf

Pamela De Vries
P.O. Box 5173
2416 Innsbruck Court
Pine Mountain Club, CA 93222
pdevries@frazmtn.com

April 30, 2009

Mary Grim
Section 10 Program Coordinator
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825
fw8tumshcp@fws.gov

Re: Comments on Tehachapi Upland Multi-Species Habitat Conservation Plan (TUMSHCP) and Draft Environmental Impact Statement (DEIS) for the Plan

Dear Ms. Grim:

I am a resident of Pine Mountain Club, Kern County, and a citizen concerned with maintaining the quality of our mountain habitats. I am concerned that the Draft Environmental Impact Statement (DEIS) prepared in conjunction with the Tehachapi Upland Multi-Species Habitat Conservation Plan has several inconsistencies and omissions. Among many other discrepancies and/or omissions, the DEIS does not address cumulative impacts to biological resources as required under NEPA. The following definitions are included in NEPA regulations:

> Sec. 1508.7 Cumulative impact
> "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.
>
> Sec. 1508.8 Effects.
> "Effects" include:
> (a) Direct effects, which are caused by the action and occur at the same time and place.
> (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
>
> Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Section 4.1-56 of the Tehachapi Upland DEIS states:

> "More urban-type development is anticipated to occur in the valley and foothill areas outside the Tehachapi Mountains uplands landscape, including expansions from the existing urbanized areas of Los Angeles County and Bakersfield in Kern County, as well as substantial potential projects such as Centennial, Grapevine, and the Tejon Industrial Complex. Potential development and conservation in these areas are not considered in the cumulative analysis because they are characterized by biological resources different than the mountain landscape resources considered in the proposed MSHCP."

I375-1

The resources of the Tehachapi "mountain landscape" discussed in the DEIS are in fact very similar to those present or expected to occur within the Centennial Specific Plan Area. The biology sections of both the Tehachapi Upland DEIS and Centennial Biota (May 2008) documents describe essentially the same vegetation types, including woodlands, scrubs, and native and annual grasslands. Wildlife species present or expected to occur are likewise similar in many respects.

I375-1 (Cont.)

Following is a list of special status wildlife species considered for coverage under the Tehachapi Upland MSHCP/DEIS that are documented as either occurring or potentially occurring in the Tejon Mountain Village Plan Area, most of which also occur or may occur within the Centennial Specific Plan Area:

Species	Tehachapi Uplands MSHCP/DEIS[1]	Centennial Specific Plan Biota Report[2]
Tehachapi slender salamander	Observed	Not observed; may occur
Western spadefoot toad	Not observed/low potential to occur	Not observed/may occur
Yellow-blotched salamander	Observed	Not observed/may occur
Peregrine falcon	Observed	Not addressed
Bald eagle	Observed	Observed
Burrowing owl	Observed	Observed
Golden eagle	Observed	Observed
Least Bell's vireo	Not observed/low potential to occur	Observed (unmated male)
Little willow flycatcher	Observed	Not addressed
Purple martin	Observed	Observed
Southwestern willow flycatcher	Observed	Not observed/may occur
Tri-colored blackbird	Observed	Observed
Western yellow-billed cuckoo	Not observed/low potential to occur	Observed (presumed migrant)
White tailed kite	Not observed/low potential to occur	Observed/potential to nest
Yellow warbler	Observed	Observed
Valley elderberry longhorn beetle	Not observed/low potential to occur	Not addressed
Ringtail	Not observed/may occur	Not addressed
Tehachapi pocket mouse	Observed	Observed
Coast horned lizard	Observed	Observed
Two-striped garter snake	Observed	Observed

[1] DEIS, Section 3.1.7; Special Status Species, including Table 3.1C
[2] Centennial Biota Report (May 2008) Table 11 Special Status Wildlife Species

I375-2

Sixteen of the 20 species listed above were observed or have potential to occur on both project sites; the remaining four were not addressed in the Centennial Biota Report.

In addition to the above species that were proposed for coverage, the following special status wildlife species were also observed in both the Tejon Mountain Village Planning Area and in the Centennial Specific Plan Area: Cooper's hawk, Northern harrier, Prairie falcon, Yellow-breasted chat, American badger and Silvery legless lizard.

The above list is not intended to be all inclusive of the resources that are in common on these two project sites; it is rather an indication of the extent of error in the DEIS statement regarding dissimilarity of biological resources on these project sites, and therefore the need to address cumulative impacts. I am therefore requesting that the existing DEIS be withdrawn so that cumulative impacts to biological resources and other issues can be adequately addressed.

Sincerely,

Pam De Vries

Comment Letter I425

mark duchamp
<save.the.eagles@gmail.com>

To: fw8tumshcp@fws.gov
cc:
Subject: Comments Tejon Ranch EIR

07/03/2009 08:13 PM

Dear FWS,

I have read one of the communications sent to you by Stan Moore on the subject of the Tejon Ranch. Stan is lobbying for the urbanization of the Tejon Ranch, and posts everyday to that effect on the raptor conservation listserv. I425-1

He is well-known to many raptor conservationists, biologists and ornithologists who exchange information on Internet. His contributions are two-pronged : on the one hand he makes friends by relating his sightings of raptors in the California countryside, his trapping techniques, etc. On the other hand he spreads libel and ad hominem on anyone who does not agree with him on any subject at hand. His over-inflated ego, self-importance, and belligerent nature are too often clouding his judgement. I425-2

Lately, Stan has found a bone to pick in the Tejon Ranch controversy. I am not sure whether he has been contracted by the Tejon Ranch company or if he is just enjoying himself insulting and libelling his old punching balls like biologist and condor specialist Dr Snyder. The suspicion of a money link was reinforced when Stan told us how he flew to Burbank airport, rented a car, and spent 3 days on the ranch as a host of Pete Bloom and other biologists who are under contract with the Tejon Ranch company. If such is the case, Stan would be joining business with pleasure as he writes to you to smear Noel Snyder and anyone, like Chris Cogan, who happens to bring evidence detrimental to the urbanization plan. I425-3

I am telling this for you to have a more balanced understanding of the reasons behind the character assassination he has been performing on respected professionals like Dr Snyder and Dr Cogan. Stan himself is a plumber by profession, but has a good hand at trapping raptors and banding them, and an equally good one at writing to obfuscate issues, and at name-dropping. I425-4

About myself : I am a retired businessman who always loved nature, with a special interest in raptors. I have taken an interest in defending both now that I have time on my hands.
I work for free, and the small NGO Iberica 2000 has been kind enough to support me morally and by publishing my articles and papers on their webpage. I425-5

I have been their Birds and Windfarms Research Manager, and am currently their Director, Climate Change and Alternative Energies, though bird and nature conservation remain high on my agenda. I was previously Birds and Windfarms Research Manager for Proact International, but realized David Conlin and I could not work effectively together, so I resigned after a year. I never made any money from any of these activities, on the contrary. It's all benevolent work. Saving what can be saved of the world's wilderness is my motivation. I425-6

I shall send you in the next few days my comments on the Tejon Ranch EIR.

Sincerely

Mark Duchamp
Environmentalist
Director, Climate Change and Alternative Energies
(formerly Birds and Windfarms Research Manager)
Iberica 2000
Partida La Sella, 25
03750 Pedreguer, Spain
tel : + 34 679 12 99 97

Comment Letter I426

mark duchamp
<save.the.eagles@gmail.com>
07/07/2009 11:25 PM

To: fw8tumshcp@fws.gov
cc:
Subject: Comments on Tehachapi Multi-species Habitat Conservation Plan

Comments on Tehachapi Multi-species Habitat Conservation Plan and Draft Environmental Impact Statement

Submitted by Mark Duchamp, environmentalist.

A) The facts

The Tejon Ranch (240,000 acres - 40 miles from the nearest Los Angeles suburb) is a protected wildlife area habouring California condors, golden eagles, mountain lions, pronghorns, wildcats etc. I426-1

The Center for Biological Diversity (CBD) is fighting to save this "de facto" natural reserve from a plan to urbanize it. Also opposing the plan are Dr Noel Snyder and another 9 California condor specialists who refused to be contracted by the developers.
THEY are the original biologists of the condor recuperation program, the real specialists. Pete Bloom, on the other hand, was just a trapper in this program. I426-2

The proposed development is massive, consisting of three projects :

1) Centennial, a brand new city of ~60,000 inhabitants, to be built from scratch in a protected wildlife habitat.

2) the Mountain Village, a luxury residential complex of ~10,000, targeting the heights that have been designated as « critical condor habitat ». I426-3

3) Grapevine, a vast industrial area and transportation hub which would serve the ports of Los Angeles and Long Beach, complete with giant wharehouses and a noisy trucking activity.
All three developments would be within the wildlife reserve boundaries.

The Tejon Ranch company, partially-owned at 30% and fully controlled by asset strippers from Wall Street, are set to make big money from this transformation of the wildlife reserve they own. They have paid consultants to produce a favourable environmental impact statement (EIS), and « convinced » major NGO's with a « deal » including money and jobs. These NGO's who endorse the urbanization of the reserve are the Sierra Club, Audubon California, and the Natural Resources Defense Council, to name three of them. I426-4

B) The arguments

The Tarmac Group, as we might call this unholy alliance of ecologists and speculators, try and justify their plan on the following grounds :

1 - the actual brick-and-mortar footprint of the urbanization will be "only" 10% of the total reserve.

I426-5

2 - the remaining 90% will be « forever » protected as wildlife habitat.

I426-6

3 - Various mitigation measures include a lead ban on ammunitions (hunting is to be maintained, being a source of food for the condors), and the provision for a full time job for a biologist.

I426-7

4 - the alternative, and this is a sort of blackmail being foisted upon us, is the dismemberment of the Tejon Ranch and its piecemeal sale by the TR company.

I426-8

It is easy to disagree with all 4 arguments :

1 - If you look at the Audubon map - http://ca.audubon.org/tejon_map_conserved.php - it is plain to see that the effect of these urbanizations will be much more important than just their 10% brick-and-mortar foorprint. Noise, night lighting , vehicle traffic, people going for a walk or a bike ride (or off-road motor bikes or quads …) etc. mean that a buffer zone must be added in thought around these encroachments. The alleged 10% is more likely to affect 30% of the reserve (or more) when you add the wildlife disturbance factor.

I426-9

And if you look at Cogan's maps - http://www.cuddyvalley.org/background/Biology/condors/ITP/cogan.pdf - you will see that the Mountain Village (the development in the center) is planned not only within the reserve, but within the smaller "critical habitat" of the endangered California condor.

Finally, looking at the first Cogan map (« Figure 1 . Locator ») two things are evident :

- the condor's « critical habitat » is small. Reducing it further would be folly.
- the condor's critical habitat within Tejon Ranch is located at the junction of the two wings of the historic condor range, and therefore connects all critical habitats together. It is thus essential to the condor's recuperation. Urbanizing it would be a major blow to the species.

I426-10

2 - "Forever" is a big word. If money can destroy 10 or 30% of the natural reserve today, more money can destroy another, say, 5% tomorrow, then another percentage later, and another, etc.

I426-11

3 - The lead ban on ammunition : lead cartridges are more effective than non-lead ones. One would need an army of rangers to spy on every hunter, to search them and their vehicles. Yet there would still be ways to cheat the ban (hiding lead ammunition within the hunting area, for instance). Lead is, of course, poison for the condors that eat the remains left by hunters. I426-12

4 - The blackmail from the Tarmac Group does not resist scrutiny, for if the FWS says NO to the development plan, the shares of the Tejon Ranch company will plummet. With the same money that the NGO's were planning to buy the remaining land in order to protect it (that's part of the deal they made with the TR company) they could buy the depressed shares on the stock market, and have some money left to buy other land elsewhere to protect other species. I426-13

C) - Conclusion

The arguments deployed in favour of urbanizing the Tejon reserve are best described as spin and obfuscation. They masquerade as a plan to save 90% of the wildlife habitat, when in fact they break it up, and introduce 70,000 people permanently in the reserve, together with their vehicles, their noise, their lights, and their uncontrolled recreational activities in the rest of the reserve together with the fire hazards this entails. Water shortage may become an issue, and so is garbage and other pollutions. In addition, an industrial area and a trucking hub will complete the invasion. All that's missing is an airport ! I426-14

The original, real raptor biologists who ran the recuperation program of the California condor have sent you their comments (David A. Clendenen, Janet A. Hamber, Dr. Allen Mee, Dr. Vicky J. Meretsky, Fred C. Sibley, Dr. Noel F.R. Snyder, William D. Toone). Please add mine to theirs, and reject the Tehachapi Multi-species Habitat Conservation Plan and its draft EIS. I426-15

Sincerely yours

Mark Duchamp
Environmentalist
Director, Climate Change and Alternative Energies
(formerly Birds and Windfarms Research Manager)
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Comment Letter I427

mark duchamp
<save.the.eagles@gmail.com>
07/08/2009 09:57 AM

To: fw8tumshcp@fws.gov
cc:
Subject: Addendum to my Comments on Tehachapi Multi-species Habitat Conservation Plan

Dear Sirs,

I fully subscribe to the views expressed below, and wish them to be added to my own comments submitted yesterday. I427-1

Mark Duchamp
Environmentalist

Condor Experts Condemn Proposed Tejon Ranch Development
Proposed "Conservation" Plan Will Hurt Endangered California Condors

Press release July 8, 2009
Contact: Jeff Miller, Center for Biological Diversity, (510) 499-9185

LOS ANGELES— A group of esteemed condor biologists, including former leaders and members of the Fish and Wildlife Service's condor research team and federal condor recovery team, has weighed in on the controversial plan to develop Tejon Ranch, broadly condemning Tejon's development proposal and its associated proposed Habitat Conservation Plan. I427-2

The scientists, including some of the most important names in the history of the conservation of the California condor, called for the rejection of Tejon's request for a permit to harm critically endangered condors. I427-3

"This remarkable group of experts who have devoted years of their lives to helping bringing the condor back from the brink of extinction have written a damning report on Tejon's massive sprawl development plans," said Jeff Miller, conservation advocate with the Center for Biological Diversity. "The consensus among independent biologists is that Tejon's supposed conservation plan fails to protect condors and their proposed developments would significantly harm the recovery of the species." I427-4

The U.S. Fish and Wildlife Service is currently considering Tejon's application for a Tehachapi Upland Multi-Species Habitat Conservation Plan, which would include a "take" permit for 27 endangered, threatened, or rare species on Tejon Ranch. The permits are essential to Tejon's plans to develop Tejon Mountain Village, the controversial luxury-home subdivision planned within the heart of designated critical habitat for the California condor. I427-5

"The condor is being brought back literally from the brink of extinction through extreme intervention and at a cost of millions of dollars in public and private funds," said Miller. "Given the importance of Tejon Ranch for the recovery of condors, it is inappropriate and legally indefensible that condors would be considered for any kind of "take" under this permit. The Conservation Plan is fatally flawed and should be withdrawn." I427-6

The centerpiece of Tejon's condor "Conservation Plan" is a supposed mitigation for development impacts of establishing artificial food stations to provide carcasses for scavenging condors. Replacing natural foraging grounds with artificial feeding stations would effectively relegate condors to outdoor zoo species, which the experts describe as "neither necessary nor desirable." The condor biologists reject this mitigation as inconsistent with the recovery of condors, since feeding stations adversely affect condor foraging behavior and movements and result in detrimental behaviors such as microtrash ingestion and human habituation. I427-7

The scientists note that the developments would: harm condors by significantly reducing the amount of high-quality foraging habitat; end hunting in current condor foraging areas, which would reduce natural food supplies; inhibit condor use of the area through effects of urbanization; and possibly alter condor movement patterns. The scientists conclude that the proposed developments would "appreciably reduce the likelihood of recovery of the California condor and adversely modify critical habitat," and represent a "major threat to recovery of the species." I427-8

Tejon Ranch, and specifically the proposed Tejon Mountain Village area, is important condor critical habitat because of (1) its abundant food supply of carrion; (2) strong and reliable winds essential for efficient condor foraging movement; (3) healthy populations of other scavengers that help condors locate food; (4) the geographic position of the ranch at a central crossroads for condor movements between other important condor use areas; (5) the area's long history of isolation from detrimental human influences associated with urbanization; and (6) the local availability of suitable overnight roosting locations. I427-9

Despite condor movement in the past decade being strongly influenced by the operation of feeding stations away from Tejon Ranch near condor release areas, many of the released birds have rediscovered and reoccupied Tejon. The Tejon Mountain Village area has been one of the most heavily used portions of condor critical habitat in recent years, with the Southern California population heavily using Tejon in 2008 and 2009 for foraging. However, Tejon's flawed Conservation Plan excludes much of this important critical habitat for condors from consideration for protection in order to satisfy its development desires. I427-10

The Center for Biological Diversity also submitted comments yesterday on the inadequacy of the Draft Environmental Impact Statement for the Conservation Plan and its violations of the Endangered Species Act and National Environmental Protection Act with respect to impacts on condors. I427-11

In 1997, as the Fish and Wildlife Service began releasing captive-reared California condors to the wild, Tejon Ranch sued the Service in an attempt to halt the release of California condors near Tejon Ranch, curtail the condor recovery program, and relegate the condors to a special status without protection under the Endangered Species Act. Although the lawsuit was arguably meritless, it was minimally defended by the government, which instead settled the case for what is believed to be a sweetheart deal that has resulted in the current plan and take permit application. I427-12

The scientists sending the letter are:

David A. Clendenen: condor field biologist, Condor Research Center (1982-1994); lead biologist for USFWS in charge of condor field studies (1994-1997); Condor Recovery Team member (1995-2000).

Janet A. Hamber: condor biologist at the Santa Barbara Museum of Natural History (1976-present); cooperator with USFWS in condor nesting and telemetry studies (1980-present); archivist and manager of Condor Information System (1988-present).

Dr. Allen Mee: post-doctoral fellow for the Zoological Society of San Diego (2001-2006); researcher on condor breeding in California and Arizona; convener of condor symposium at AOU 2005 conference, Santa Barbara; senior editor of *California Condors in the 21st Century* (2007); currently manager of White-tailed Sea Eagle Reintroduction Program in Ireland.

Dr. Vicky J. Meretsky: field biologist in charge of telemetry interpretations, Condor Research Center (1984-1986); senior author of *Range, Use and Movements of California Condors* (1992); senior author of *Demography of the California Condor* (2000); associate professor of environmental science, adjunct appointment to the Department of Biology and affiliated faculty at the Maurer School of Law, Indiana University (1997-present). I427-13

Anthony Prieto: co-founder of hunter organization Project Gutpile (1999-present).

Fred C. Sibley: former field leader of condor research program for USFWS (1966-1969); author of *Effects of the Sespe Creek Project on the California Condor* (1969).

Dr. Noel F.R. Snyder: former field leader of condor research program for USFWS (1980-1986); former member of Condor Recovery Team (1980-1986); senior author of *The California Condor, a saga of natural history and conservation* (2000); senior author of *Introduction to the California Condor* (2005); recipient of William Brewster Award of American Ornithologists' Union for research and conservation work with the California Condor and Puerto Rican Parrot, 1989.

William D. Toone: Condor Recovery Team member (1986-1992); Curator of Birds, Zoological Society of San Diego (1983-1993); Director of Applied Conservation, Zoological Society of San Diego (1993-2003); Founding trustee and Executive Director of the ECOLIFE foundation (2003-present).

For more information on protecting Tejon Ranch see www.savetejonranch.org.

The Center for Biological Diversity is a nonprofit conservation organization with 220,000 members and online activists dedicated to protecting endangered species and wild places.
www.biologicaldiversity.org

Comment Letter I495

6 July 2009

Mary Grim
Pacific-Southwest Regional Office
2800 Cottage Way, Room W-2606
Sacramento, Calif. 95825

and

Steve Kirkland
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, Calif. 93003

Dear Colleagues at the U.S. Fish and Wildlife Service:

After studying the relevant documents (as available over the Internet) in some detail, I wish to comment briefly on the *DRAFT EIS and the Tehachapi Upland Multiple Species Habitat Conservation Plan HCP*. I hope that my comments can be included in the record prior to the 7 July 2009 deadline. My credentials include a Ph.D. in ecology (Princeton University, 1978), 120 scientific publications, and 31 years as a professional biologist, ecologist, and conservation scientist stationed at the following three institutions: Field Museum of Natural History, Chicago (1978-1989; Curator of Birds and Chair, Dept. Zoology); Archbold Biological Station, Lake Placid, FL (1988-1995; Executive Director); Cornell Laboratory of Ornithology, Ithaca, NY (1995 - present; Executive Director and Professor, Ecology and Evolutionary Biology, Cornell University). I served as President of the American Ornithologists' Union from 2000 to 2002, and currently serve on three Endangered Species Recovery Teams ('Alala; Florida Scrub-Jay; Ivory-billed Woodpecker). I495-1

My comments pertain most directly to those aspects of the above documents relating to California Condors, their habitat requirements, and steps for mitigation and management of impact by the developments proposed by Tejon Ranchcorp (TRC). Briefly stated, I am deeply impressed by the careful attention TRC has paid to this issue and by their commitment to serve as an agent for _positive_ (not negative) impact on the conservation and recovery of the condor, even as they proceed with specified residential and commercial developments. Their now very public commitment to securing long-term protection and conservation management of nearly 90% of the Tejon Ranch -- including really huge areas regularly used by condors both historically and currently -- represents a genuine milestone in the conservation of California's spectacular biodiversity. I am familiar with the controversy over so-called 'critical habitat' designations made decades ago, including the claim by some that proposed developments by TRC would destroy vital portions of such habitat. Today, however, the reality and absolute crux of California Condor recovery is their well-documented need for ample food that is free of lead. It is also well documented by now that condors will forage wherever the food is, and this can largely (though not, of course, entirely) be subject to manipulation by humans through regular provisioning at feeding stations. Therefore, the earlier designation of "critical habitat" that encompassed certain controversial areas of Tejon Ranch is no longer relevant to today's condors, which largely exist as a managed population from the standpoint of foraging behavior. Moreover, the willingness of Tejon Ranch to ban all use of lead, and to make gut piles (from hunting), pigs (from feral hog control), and cattle (from ongoing ranching) available at condor feeding stations as a perennial source of food represent extremely important and cooperative steps I495-2

toward long term goal of having the California Condor live comfortably side-by-side with geographically contained human development. In the end, the fact that Tejon Ranch has agreed to leave such an enormous proportion of its ranch essentially forever wild, and freely open for use by the condors (as well as all the other species at this unique nexus of ecosystems), is such a vast improvement over all previously contemplated realistic alternatives, that this commitment alone might be sufficient to alleviate and mitigate any potential impacts of their proposed developments. Witrh these considerations in mind, in my professional view TRC has gone above and beyond all expectations to be ecologically responsible collaborators in the conservation of the southern California ecosystem, condors and all. Indeed, we conservations _want_ TRC and companies like them to be rewarded for being responsible, far-sighted collaborators in biological conservation. Would that all prospective ranchers and land developers around the country behave similarly.

I495-2 (Cont.)

Respectfully submitted,

John W. Fitzpatrick
Louis Agassiz Fuertes Executive Director, Cornell Laboratory of Ornithology

Comment Letter I503

TO: FISH AND WILDLIFE SERVICE

SUBJECT: SUBMISSION OF PUBLIC COMMENTS
TE-204887-0 Draft TUMSHCP
PUBLIC COMMENT REGARDING DRAFT ENVIRONMENTAL IMPACT STATEMENT
REFERENCE: Tejon Ranchcorp - TEHACHAPI UPLANDS MULTIPLE SPECIES HABITAT CONSERVATION PLAN, Kern County, CA (submitted - 7/7/09)

Submitted by: Peggy Forster
4248 Troost Avenue #1
Studio City, CA 91604
(818) 762-5852
peggy.forster@prodigy.net

(Please Note: I did not find directions (on the FWS website) for submitting comments below. If this was an oversight on my part, and a specific format is required, kindly advise.)

PUBLIC COMMENT regarding Tejon Ranchcorp,
Draft Environmental Impact Statement. Below is a partial list of my concerns regarding impacts of proposed development on the Tejon Ranch property. I503-1

1. Depletion of aquifers and diminishing water resources I503-2
2 . Hazardous and costly fire potential in developed areas I503-3
3. Traffic gridlock I503-4
4. Air pollution I503-5
5. Public health impacts upon nearby cities; i.e., Bakersfield and Los Angeles I503-6
6. Loss of habitat of threatened and endangered species I503-7
7. Impacts of urban blight upon wildlife (noise, neon lights, homeless encampments, hazardous waste and trash disposal I503-8
8. Disturbance of adjacent protected habitats by animal control methods and surveillance I503-9
9. Increase of global warming due to population density in a formerly pristine region.

In identifying the above potential impacts of massive development on the Tejon Ranch property, it is difficult to understand how "mitigation" efforts will prove effective in protecting the habitats and species native to this area, as well as the thousands of new residents who will be subject to urban sprawl and the consequences of residing in a zone at high risk for public health impacts. I503-10

Following is an exerpt from an article by journalist Margot Roosevelt which appeared in the Los Angeles Times, Page A-11, on April 29, 2009.

"BAKERSFIELD IS NO.1 IN FINE-PARTICLE POLLUTION --
Bakersfield had the worst level of fine-particle pollution in the nation last year
-- a toxic mix of soot, diesel exhaust, chemicals, metals and aerosols that contribute to heart attack, stroke, and lung disease, according to the American
Lung Association's annual State of the Air report. The San Joaquin Valley city I503-11

displaced Los Angeles, which fell to the third spot in the category of year-round particle pollution, behind second-place Pittsburgh-New Castle, Pa. The lung association report is based on data from local governments' air monitoring stations and statistics gathered by the U.S. Environmental Protection Agency."

I503-11 (Cont.)

The burning of fossil fuels is a serious threat to planetary health and population survival, yet the push for domestic drilling and exploration predicts continuing reliance on petroleum as an energy source.

I503-12

With Los Angeles to the south of Tejon, and Bakersfield to the north, I believe we can predict another "diesel death zone" and crisis in public health in the Tejon area. Development of three new mega-communities between two heavily polluted cities will quickly add to the peril and increase the incidence of cancer and cardiopulmonary disease among many thousands of new residents..

I503-13

Research based on data collection and statistical analyses, as described in the article above, can no longer be regarded as a subject for debate. The science of air pollution is irrefutable and calls for a new approach to land-use planning where caution, transparency, and multi-agency decision-making help to determine the best placement for mega-communities. Also, the importance and value of conserving pristine lands where the lack of fossil fuel emissions affords measurable relief from climate change needs to be recognized and carefully considered in future city planning.

I503-14

On the subject of habitat protection, endangered animals, birds, and plants are clearly in greater jeopardy from the despoiling process which occurs as bulldozers and diesel trucks invade their habitats disturbing the soil and quietude for miles beyond the designated development. The disruption of multiple eco-systems within this larger habitat will destroy in perpetuity ancient wild-life corridors as well as migratory habitat where species dependent upon familiar resting and feeding grounds have found predictably found shelter.

I503-15

In particular, the California Condor Recovery Program which has only a tenuous hold on success, and has cost Californians millions of dollars, is now subject to an arbitrary design for rerouting Condor flight away from newly populated areas. As the entire Tejon region has been home to Condors for millennia, it is highly unlikely flight patterns can be easily re-wired to accommodate this plan. In 1972, John Borneman, then a Condor specialist with Audubon Society said, "During October, 90% of the Condor population can be found on Tejon Ranch property." Condor fledglings in this new century will be particularly vulnerable when hatched close to a newly developed and heavily populated area.

Thank you for the opportunity to submit these comments and concerns.

I503-16

Comment Letter I513

Joe Francis
<jfrancis@masters.edu>

04/19/2009 06:19 AM

To: "fw8tumshcp@fws.gov" <fw8tumshcp@fws.gov>,
"lois_grunwald@fws.gov" <lois_grunwald@fws.gov>
cc: "P. Hedlund" <editor@mountainenterprise.com>
Subject: concern over the HCP for the greater Frazier Park mountain areas

Dear Lois Grunwald,

Thanks for your recent letter in our local paper "The Mountain Enterprise" in Frazier Park.

Please tell us how we can comment on the T ehachapi Uplands Multispecies Habitat Conservation Plan (HCP) if the documents are full of errors as established by some of our own community members, including those who are experts in the field of conservation biology.

I513-1

I would urge the FWS to correct these documents and reissue them for public comment.

Please feel free to contact me at the email address below.

Sincerely,

A concerned mountain community citizen,

Joe Francis

Joe Francis PhD
Pinion Pines
1220 Snowline
Frazier Park, CA
Professor of Biology
The Master's College
21726 Placerita Caynon Rd
Santa Clarita California, 91321
jfrancis@masters.edu
661-259-3540 ext 3158
FAX 661-362-2724

Comment Letter I528

"Ken Fry"
<kfry@bak.rr.com>
05/05/2009 12:25 AM

To: <fw8tumshcp@fws.gov>
cc:
Subject: Applications of Tehachapi Uplands MSHCP

To: US Fish and Wildlife Services

Re: draft HCP and Draft EIS of Tehachapi Uplands

--OPPOSE--

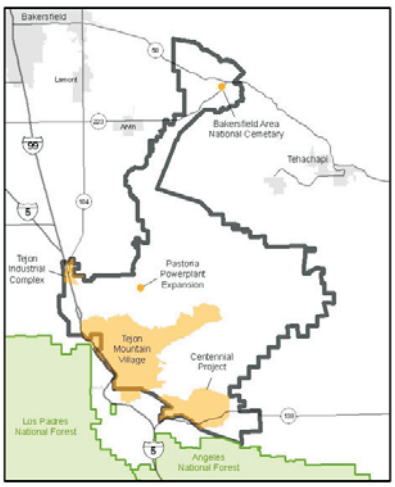
Let's summarize the whole story in one sentence: Tejon Ranch intends to build large and profitable cities right in the protected areas designated for the rescue of endangered species including the rare and endangered California Condor!

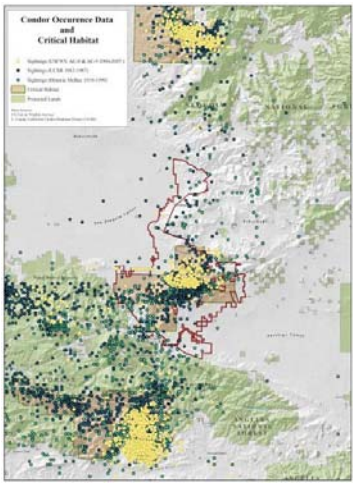
I528-1

Tejon is coming at you with brass bands playing and cannons firing in a spectacular demonstration of how, with a lot of money thrown in the right direction, slick promoters can influence planners and governments.

Consider the two maps of the proposed Tejon scheme. One shows the extent of their holdings and denotes the location of the proposed cities. The other map shows the location of the California condor sightings. Omigosh, they are at precisely the same place. It is as if the giant birds will be renting rooms within the newly constructed people-sized housing. But we must not forget -- condors are not city dwellers. Why are they successful in their current locations at all? It is precisely because they are so far away from so-called civilization. Human developments must be kept many miles away from these endangered creatures.

I528-2





I528-2 (Cont.)

The plan is to develop massive residential, industrial, commercial and service businesses in an area presently the home of quite a number of endangered and threatened plant and animal species. The scale is, to the creatures living there, enormous. If just a few plants and critters were lost to so called accidental or "incidental" take the species might still be able to recover and sustain themselves, absorbing a small loss. But when the project is massive in its very nature, when bull-dozers, scrapers, and other equipment are called in to level, and thus destroy, square mile upon square mile of land along with everything in it, on it, or over it--then there can be no mere incidental losses. Whole populations of species could be wiped out. No individual animal can escape into a different tree or to another den. No seed can drift around to find a new place to put down roots. No bird can find a tree in which to build a new nest. Their part of the world is gone forever.

I528-3

A city can survive a fire-cracker or even a house fire. But a city can never survive the blast of an atomic bomb. With such an event the concept of an "incidental" house fire is silly. Likewise, the proposed plan under consideration is so massive there can be no such thing as an "incidental" take.

I528-4

To clear the land for all the proposed building will result in a decimation similar to that caused by an atomic bomb. Oh, to be sure, it will not be as instantaneous. The destruction will take several years. But to the California Condor, to the least Bell's vireo, to the southwestern willow flycatcher, to the valley elderberry longhorn beetle, and to the western yellow-billed cuckoo it will be just as final as a nuclear explosion.

We are not just looking at a truck tire that accidentally runs over somebody's dinner. We are not looking at a fork-lift that accidentally knocks an egg out of a nest. Nor are we seeing some workman carelessly stepping on a Tejon poppy. No, we are seeing giant bull-dozers and earth movers completely tearing up the land over vast areas. They will follow one right after the other, hour after hour, day after day, year after year. If one truck misses a certain beetle, the next truck will get him -- along with his family. Or maybe the next. Squish. There is absolutely nothing incidental about it.

And so the plan goes. . . .

I528-4
(Cont.)

We are all familiar with the story, quickly becoming legend, of how the California condor population was down to just a tiny handful of birds, of the sacrifices, labor and expenses that were spent in their rescue, and how very fragile that population still remains. Yet some believe their own desire for more riches trumps continuing with an earth the way God created it. They insist they have the right to destroy California's golden beauty. They will exterminate entire precious species, which can never return--all for a few more (or many more) coins in their pockets.

I528-5

A lot of money has gone into promoting this project. According to the Secretary of State Tejon has made contributions to quite a number of politicians in the area, on either side of the political scale, often to political opponents. This, of course, was to be sure the bases are covered when it comes to permits and approvals.

When the plan first came out a local scientist wrote to the local newspaper endorsing the plan. But guess what, he admitted he was on Tejon's payroll. What would anyone expect him to say? Yet a letter signed by no fewer than eleven of the top scientists bewailed what the proposal would do to the plants and animals in the area.

Tejon even got several so-called conservation groups to agree secretly and behind closed doors not to oppose them. They paid them off by putting them on their committee.

Not a stone has gone unturned, nor has a dollar not been invested, to pull off this tramsition from nature's gift of beauty to a scheme of barren riches .

Please, it is up to the planning and permit process to put a stop to this scheming to destroy the natural beauty and riches of this corner of the earth. I am aware this is like David pleading for someone to stop Golioth. But somehow David pulled it off. I am praying for the same thing to happen in modern times.

I528-6

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